

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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Donald Sanders, ) CIVIL FILE  
Plaintiff, ) NO. 17-CV-5106 (ECT/KMM)  
vs. )  
BNSF Railway Company, ) Courtroom 3B  
Defendant. ) Friday, December 10, 2021  
 ) St. Paul, Minnesota  
 ) 10:00 A.M.  
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JURY TRIAL PROCEEDINGS

BEFORE THE HONORABLE ERIC C. TOSTRUD  
UNITED STATES DISTRICT JUDGE  
AND A JURY

## A P P E A R A N C E S:

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1 (9:55 a.m.)

## PROCEEDINGS

**IN OPEN COURT**

4 (Without the jury)

5 THE COURT: Good morning, everyone. Please be  
6 seated.

I just wanted to take a minute to let all of you know that we had to dismiss a juror yesterday. It is not COVID. It is Mr. Newbloom, who is Juror No. 4, seated in the second row closest to the law clerk.

11 I don't think that I am at liberty to share  
12 information regarding the dismissal other than to observe,  
13 as I have, that it's not COVID.

14 And then I guess I would add that as we dealt with  
15 the issue last night, it occurred to me that this does  
16 highlight the need that we talked about before trial began  
17 to be efficient and expedient and move this case along for  
18 fear that given the time of the year, even if it is not  
19 COVID, in this moment when we are so sensitive to illness,  
20 that we are always at risk of losing jurors.

21 So, I'll leave it at that. Let's keep it moving.

All right. Let's get the jury.

23 MS. FERGUSON: Could I bring the witness in so we  
24 don't delay?

THE COURT: Certainly.

1 (Witness retrieved)

2 (Jury enters)

3 THE COURT: Thank you, everyone. Please be  
4 seated.

5 Ms. Ferguson?

6 MS. FERGUSON: Yes, Your Honor. We will call  
7 Suanne Grobe Ranheim.

8 THE COURT: Ms. Grobe Ranheim, I'll invite you to  
9 come up here and stand between the railing and the witness  
10 chair and I'll ask the deputy clerk to administer the oath  
11 at this time.

12 COURTROOM DEPUTY: Please state your full name for  
13 the record, spelling your first and last name.

14 THE WITNESS: Suanne Grobe Ranheim, S-U-A-N-N-E,  
15 G-R-O-B-E, R-A-N-H-E-I-M.

16 COURTROOM DEPUTY: Please raise your right hand.

17 **SUANNE GROBE RANHEIM, DEFENDANT'S WITNESS, SWORN**

18 THE COURT: Thank you, Ms. Grobe Ranheim. Please  
19 have a seat. And make sure you're close to that microphone  
20 so we can hear you.

21 Ms. Ferguson?

22 THE WITNESS: May I remove my mask?

23 MS. FERGUSON: Yes.

24 THE COURT: Sure.

25 THE WITNESS: Okay. Thank you.

**DIRECT EXAMINATION**

1 BY MS. FERGUSON:

2 Q. Good morning.

3 A. Good morning.

4 Q. Please state your name.

5 A. Suanne Grobe Ranheim.

6 Q. And what is your office address?

7 A. 3109 Hennepin Avenue, Minneapolis, Minnesota, 55408.

8 Q. What is your occupation?

9 A. I'm a vocational expert.

10 Q. What does a vocational expert do?

11 A. I evaluate individuals' employability and earning  
12 capacity following a result of a personal injury, workers'  
13 compensation, FELA matter, employment, divorce cases, sexual  
14 abuse cases, and product liability cases.

15 Q. How long have you been involved in the vocational  
16 industry?

17 A. I've been in the vocational rehabilitation industry for  
18 23 years. I started my business in 2007 as a vocational  
19 consultant, at which time I primarily conduct independent  
20 vocational evaluations in the course of litigation.

21 Q. Could you tell the jury something of your education and  
22 background that led to your qualification as a vocational  
23 expert.

24 A. Yes. I have a Bachelor's of Science in vocational

1       rehabilitation. I have a Master's of Science in vocational  
2       rehabilitation and counseling.

3       Q. Did you work for a number of years assisting employees  
4       to return to work or find work?

5       A. Yes. The first ten years of my career I was a qualified  
6       rehabilitation consultant in the state of Minnesota, so I  
7       managed the medical treatment and return to work for  
8       individuals who had sustained workers' compensation  
9       injuries.

10                  And then for the next ten years I worked  
11       internally at Andersen Windows, as well as a consultant for  
12       Andersen Windows and Malt O Meal cereal to identify  
13       alternative transitional return to work following injury  
14       or -- personal injury or illness for both of those  
15       employers.

16       Q. Are you a member of any professional organizations?

17       A. Yes. I am a member, an associate member, of the  
18       American Board of Vocational Experts.

19       Q. And in your work as a vocational expert, do you get  
20       involved in looking at the labor market to identify jobs and  
21       industries that may be available?

22       A. Yes. That's part of the vocational evaluation or review  
23       of records to assess the labor market, the qualifications,  
24       whether physical or cognitive qualifications, that are  
25       required, as well as just an understanding of what jobs are

1 available and present opportunities for individuals.

2 Q. In this case were you asked to review records and  
3 provide an opinion as to -- or to evaluate Mr. Sanders'  
4 employability and earning capacity?

5 A. Yes.

6 Q. And were you also asked to look at the labor market to  
7 tell us what railroad jobs have been available from 2018 to  
8 the present in the railroad industry?

9 A. Yes.

10 Q. Did you prepare three separate reports regarding the  
11 work you've done in this particular case?

12 A. Yes.

13 Q. Okay. Was the first report dated August 2, 2018?

14 A. Yes.

15 Q. Okay. Could you tell the jury what your understanding  
16 was of the background related to Mr. Sanders.

17 A. Mr. Sanders was employed as a track  
18 inspector/welder/foreman for Burlington Northern from June  
19 of 2007 up until April 29th of 2016. He was terminated from  
20 his employment and my understanding was since his  
21 termination he had secured alternative employment from that  
22 date to the present. He's secured eight different positions  
23 and is currently working full time.

24 Q. Did you have an understanding of his employment  
25 generally prior to BNSF?

1       A. Yes. Based upon the records, his deposition, as well as  
2 other records, he worked at Ford Motor Company I believe as  
3 a fitter/utility worker for approximately ten years, and  
4 then, as indicated, he did a variety of positions as  
5 mechanic, construction laborer, and maintenance technician  
6 prior to securing his current position.

7       Q. What was your understanding of his vocational activities  
8 or job search?

9       A. Based upon the records I had received, that Mr. Sanders  
10 had performed a job search from November of 2016 through  
11 March of 2018. Based upon the documentation, he had applied  
12 for 15 positions during that 17-month period, two of which  
13 were for a railroad. One was for Union Pacific and one was  
14 for Canadian Pacific, although the job title and the date  
15 that he applied was unknown or not provided in the records.

16       Q. Based on your review of the records, did you reach  
17 opinions regarding his employability as of that date,  
18 August 2, 2018?

19       A. Yes.

20       Q. I'm going to ask you several questions regarding your  
21 opinions, and would you state all of your opinions to a  
22 reasonable degree of vocational certainty?

23       A. Yes.

24       Q. Okay. First, what was your opinion of what Mr. Sanders'  
25 transferable skills were?

1       A. He had solid transferable skills particularly by  
2       utilizing his experience, his ten years of experience -- or  
3       nine years' experience, excuse me -- at the railroad as a  
4       track inspector relative to safety, moving products by rail,  
5       the understanding of equipment and policies and procedures,  
6       as well as providing customer service in the sense of  
7       meeting demand and timelines and so forth.

8       Q. In your opinion, did he have any objective medical or  
9       vocational barriers that would preclude him from working  
10      full time?

11      A. No.

12      Q. Any vocational barriers that would preclude him from  
13      working full time as a track inspector, welder, or foreman?

14      A. No.

15      Q. Do you have an opinion as of August 2, 2018 whether he  
16      was underemployed?

17      A. Yes, I do have an opinion.

18      Q. And what is that opinion?

19      A. That he was underemployed at the time, as he was --  
20      although he was working full time, his earnings were not  
21      consistent with his earning capacity, as well as he had not  
22      exhausted all of the opportunities within a variety of  
23      railroads that would likely have increased his earning  
24      capacity.

25      Q. In your opinion, did he perform a reasonable and

1           diligent job search?

2       A. No.

3       Q. Can you tell the jury what a reasonable and diligent job  
4           search is.

5       A. Well, typically if an individual is looking for a  
6           full-time position, it requires a full-time job search, and  
7           I had outlined parameters in my report which are kind of  
8           standard guidelines, you know, six to eight hours a day,  
9           four to five contacts daily, submitting one to two resumes  
10          per day, registering with job search engines, and most  
11          importantly documentation of the activities. While those  
12          are the parameters of a full-time job search, obviously with  
13          technology it doesn't take six to eight hours a day to  
14          perform a variety of job search contacts.

15           For example, a contact could be researching job  
16          openings on Indeed, looking up an employer's website to  
17          understand what they do, what kind of opportunities they  
18          have, connecting with one of your personal networks. So  
19          there's a lot of avenues or contacts that can made in a very  
20          short time period.

21       Q. Then fast-forward a year and a half later to March 12,  
22          2020. Were you asked to perform a supplemental record  
23          review and update your opinions regarding Mr. Sanders'  
24          employability?

25       A. Yes.

1 Q. What additional information did you review or have  
2 available at that time?

3 A. At that time I received Mr. Sanders' deposition  
4 transcripts, his -- the economist's report, a wage history  
5 table, as well as his employment records from the recent  
6 employers that he had secured employment. I also received a  
7 Union Pacific job application and the Canadian Pacific job  
8 application that he had submitted. I think those were the  
9 primary records.

10 Q. Was it your understanding he had applied just once to  
11 Canadian Pacific and to Union Pacific?

12 A. Yes, that was my understanding.

13 Q. As of that date, March 12, 2020, did you identify any  
14 objective medical or vocational barriers that would have  
15 prevented Mr. Sanders from full-time employment or from  
16 performing a diligent job search?

17 A. No.

18 Q. Based on those records, in your opinion, did he perform  
19 a reasonable and diligent job search?

20 A. No. There wasn't any additional job search  
21 documentation, so the last that had been reviewed was March  
22 of 2018, so there wasn't any additional job search effort  
23 made based upon the records.

24 Q. And did you research what railroad jobs had been  
25 available from 2018 until that date?

1 A. I did.

2 Q. What were the various railroads that had job openings  
3 during that period of time?

4 A. There was a variety of them. Progressive Rail, Union  
5 Pacific, Wisconsin and Southern Railroad, Amtrak, Canadian  
6 National, Canadian Pacific, Minnesota Prairie, Transtar, and  
7 Progressive Rail.

8 Q. How did you identify those various railroads that had  
9 job opportunities?

10 A. I utilized the RRB, the railroad website, that has  
11 specific links to all the individual railroads and then  
12 specific job openings. So that's a website that's available  
13 to any individual, as well as based upon my experience  
14 working with the railroads, what jobs had been available  
15 during that time frame.

16 Q. And what jobs, specific job titles, did you identify as  
17 having been available?

18 A. A few of the job titles were track inspector, conductor  
19 trainee, trainmaster, car man and yardmaster, or related job  
20 titles. Each of the railroads have different job titles for  
21 same or similar occupations.

22 Q. In your opinion, does Mr. Sanders possess the physical  
23 capacity, qualifications, knowledge and skills to work full  
24 time as either a track inspector, a welder, foreman?

25 A. Yes.

1 Q. What did your research indicate as to what those jobs  
2 paid?

3 A. The research indicated the average annual salary was  
4 75,000 to 88,000 per year.

5 Q. Did you find any jobs in the railroad industry in your  
6 research that indicated they were paying a hundred thousand  
7 dollars?

8 A. No.

9 Q. The wages you found are substantially lower than what  
10 Mr. Sanders was making at BNSF?

11 A. Yes.

12 Q. Do you have an explanation for that?

13 A. It's my understanding that he worked overtime, as well  
14 as the basis of the claim is that he falsified his time  
15 cards, so the research does not indicate that there's  
16 employees that are making that wage for the job that he was  
17 doing at the time of the termination, as well as the  
18 alternative occupations I outlined.

19 Q. And then -- now, again fast-forward another about year  
20 and a half to October 19, 2021, did you do again a  
21 supplemental review, an update of your reports?

22 A. Yes.

23 Q. And what additional information did you have in October  
24 of 2021?

25 A. I had the supplemental report by the economist, paycheck

1 records from his current employer, Mann Companies, his W-2  
2 from 2020. Those were the three records I reviewed.

3 Q. And what did the records indicate regarding his earnings  
4 at Mann Companies in 2020?

5 A. Mr. Sanders earned just over 82,000 a year.

6 Q. And was that amount equal to or more than what the  
7 railroad jobs were paying that you found based on your  
8 research?

9 A. Basically right in the middle of my salary that I  
10 outlined was reasonable.

11 Q. And did you do additional research to determine whether  
12 the jobs remained available at various railroads at that  
13 time, between the date of your last report and your most  
14 recent report?

15 A. Yes.

16 Q. Okay. And again, were those the same railroads?

17 A. There were -- yeah, I think some of them are the same:  
18 Canadian Pacific, Union Pacific, Canadian National and  
19 Wisconsin and Southern Railroad, so the last one is  
20 different then.

21 Q. And did you find that there were positions as track  
22 inspector, conductor trainee, yardmaster, car man,  
23 trainmaster available?

24 A. Yes.

25 Q. Is there any indication in the records that Mr. Sanders

1 applied for any of those positions or at any of those  
2 railroads except for the short time after his termination?

3 A. No.

4 Q. Is Mr. Sanders now earning wages similar to what he  
5 could expect to earn in the railroad industry?

6 A. Yes.

7 Q. In your opinion, is he capable of performing essential  
8 functions of the job of a track inspector, foreman, welder,  
9 and the other job opportunities you identified?

10 A. Yes.

11 MS. FERGUSON: Thank you. I don't have any  
12 further questions.

13 THE COURT: Mr. Kaster?

14 MR. JAMES KASTER: Thank you, Your Honor.

15

16 **CROSS-EXAMINATION**

17 BY MR. JAMES KASTER:

18 Q. Ms. Grobe Ranheim -- did I say that correctly?

19 A. You did. Thank you.

20 Q. Thank you. Good morning.

21 A. Good morning.

22 Q. I want to follow up on something you just said.

23 You were talking about Mr. Sanders' earnings in  
24 2015 and 2016 with BNSF, and there was a reference to him  
25 earning a hundred and fifty-five thousand or substantially

1 more than the posted numbers that you referenced for  
2 positions like his, and you made a reference to the claim  
3 that Mr. Sanders falsified his time cards.

4 Do you recall saying that?

5 A. Yes.

6 Q. I want to know, are you implying to this jury that the  
7 reason why Mr. Sanders earned what he earned was because he  
8 had falsified his time cards?

9 A. No.

10 Q. Okay. You've been working on this case for how long?

11 A. Since August of 2018.

12 Q. Are you familiar with the fact that the claim by BNSF  
13 was that Mr. Sanders falsified less than seven hours of  
14 time? Are you aware of that?

15 A. No.

16 Q. You've never been aware of that.

17 A. No.

18 Q. I see in your report you say that Mr. Sanders was  
19 terminated, according to BNSF, for wage theft. Do you  
20 recall that?

21 A. Yes.

22 Q. Do you realize that the time that Mr. Sanders, according  
23 to BNSF, falsified was that he was actually accused of the  
24 theft before the payroll was even paid? Do you know that?

25 A. No.

1 Q. Have you ever heard that?

2 A. No.

3 Q. Do you realize that the accusation of wage theft is a  
4 serious matter for an employee in terms of trying to find a  
5 new job?

6 A. Well, Mr. Sanders has demonstrated the ability to secure  
7 employment, so thus far it has not precluded him.

8 Q. My question is different. It isn't about the eight  
9 different jobs that he's had. Because as I understand the  
10 centerpiece of your opinion, it's that Mr. Sanders should be  
11 able to secure a job in the railroad industry, right?

12 A. The essence of my opinion is that Mr. Sanders has not  
13 exhausted all of the opportunities available by not seeking  
14 out the available positions that could be matched based on  
15 his experience and education within a railroad.

16 Q. Within a railroad.

17 A. Correct.

18 Q. Because I think you told me at your deposition that the  
19 centerpiece of your opinion was that he should be able to  
20 get a job in the railroad industry. Do you recall that?

21 A. Yes.

22 Q. And specifically, he was working as a track inspector.

23 A. Correct.

24 Q. And you've talked about the fact that he should be able  
25 to secure a job as a track inspector with another railroad,

1 right?

2 A. Correct.

3 Q. Let's just cover a couple of things.

4 You don't have an opinion on Mr. Sanders' back pay  
5 loss, right?

6 A. Correct.

7 Q. You agree that for the purpose of reviewing his  
8 background and experience the primary position that he held  
9 at BNSF was as a track inspector, right?

10 A. Correct.

11 Q. And I think we went through some of his qualifications  
12 when I visited with you at your deposition. You said you  
13 agree he has good decisionmaking skills, right?

14 A. Yes.

15 Q. Critical-thinking skills. He has good critical-thinking  
16 skills, right?

17 A. Yes.

18 Q. Time management skills, right?

19 A. Yes.

20 Q. That he has complex problem-solving operation and  
21 control, quality control, right?

22 A. Correct.

23 Q. And he has all those skills, right?

24 A. Correct.

25 Q. And then I asked you another question about whether --

1 well, maybe BNSF should hire him. Do you recall that?

2 A. I don't specifically.

3 Q. I asked you if you had informed BNSF of these skills  
4 that Mr. Sanders obviously has and I think you said, "Well,  
5 not directly." Do you recall that?

6 A. I trust that if that's what was in my deposition.

7 Q. I mean, the question is not really a serious one,  
8 because BNSF isn't going to hire him, right?

9 A. I don't know the answer to that question.

10 Q. Well, you wouldn't recommend that he go apply for a job  
11 at BNSF, would you?

12 A. I don't have an opinion about it.

13 Q. You don't have an about whether or not the fact that  
14 they have accused him of wage theft would be a barrier to  
15 entry at BNSF?

16 A. That's fair.

17 Q. You agree that he had a consistent job/work pattern  
18 apparent since the time of his -- I mean, he had eight  
19 different jobs since he's left BNSF, right? Yes, he's had a  
20 consistent work pattern.

21 Q. You appreciate the fact that Mr. Sanders needs to work  
22 for himself and his family.

23 A. Of course.

24 Q. And you agree with the fact that he applied for 15  
25 different jobs between March of 2016 and March of 2018,

1 right?

2 A. According to the records, yes.

3 Q. And then we talked about whether he should tell  
4 prospective employers that he was terminated for wage theft,  
5 and I think you said, "I don't think so." Do you recall  
6 that?

7 A. I believe I indicated that there are circumstances when  
8 employees leave an employer and they indicate on their  
9 application, they will explain at the time of interview, or  
10 they just confirm the dates of employment without  
11 specifically addressing the question.

12 Q. So that as I understand it, you think that that would be  
13 a thing that a person like Mr. Sanders should talk about in  
14 the job interview as opposed to on the application.

15 A. Certainly. You know, it's not any different than an  
16 individual that has a disability, and if they're able to  
17 perform the essential functions of the job with or without  
18 accommodations, it's reasonable that they apply and then  
19 they discuss any barriers to them fulfilling the essential  
20 functions at the time of an interview or a job offer.

21 Q. And with respect to the jobs that he actually has had,  
22 you don't have an opinion about whether or not he should  
23 have obtained those jobs, or stayed at those jobs, or gone  
24 to the next job among the eight that he's had, right?

25 A. No.

1 Q. Okay. You agree with the proposition that being a  
2 convicted felon is an objective barrier to entry for many  
3 jobs, right?

4 A. Correct.

5 Q. And the accusation of wage theft against Mr. Sanders, am  
6 I understanding you don't believe that's an objective  
7 barrier to entry?

8 A. It's my opinion that obviously he's demonstrated the  
9 ability to secure employment, so whether those employers  
10 have done a background check and disregarded the current  
11 claim or it wasn't a factor in securing employment.

12 Q. I mean, you agree with the proposition that most  
13 employers do background checks, right?

14 A. It's my understanding that a majority of employers do.  
15 I think there's different --

16 Q. I'm sorry. I didn't mean to cut you off.

17 A. That's okay.

18 Q. Specifically as it relates to railroads, they do  
19 extensive background checks. You know that, right?

20 A. That is my understanding.

21 Q. And in fact, Mr. Sanders in terms of his application at  
22 Union Pacific had a longer look. Are you aware of that?

23 A. No.

24 Q. Do you think that employers do a public records search  
25 when they do a background search? Are you aware of that?

1 A. Like I said, I think employers have different standards  
2 and levels of background checks that they perform given the  
3 nature of the position.

4 Q. Well, we've seen a document in this case that BNSF has  
5 shown that actually is a public record of the accusation of  
6 wage theft against Mr. Sanders (indicating) in the form of  
7 an arbitrator's award, an appeal from the investigative  
8 hearing. Are you aware of the investigative hearing, how  
9 that went and the appeal?

10 A. No, I have not reviewed that record.

11 Q. So you haven't seen a public record of this acquisition  
12 of theft against Mr. Sanders. You're not aware of that.

13 A. Correct.

14 Q. Would you consider that to be an objective barrier to  
15 entry?

16 A. Possibly.

17 Q. Now, as I understand it, you focused in particular --  
18 we're focused in particular on the railroad industry and on  
19 the position of track inspector, right?

20 A. As one of the potential return-to-work opportunities,  
21 yes.

22 Q. In the railroad industry for Mr. Sanders, right?

23 A. Correct.

24 Q. Are you aware of the fact that a track inspector works  
25 hand in hand with the Federal Railway Administration? Are

1 you aware of that?

2 A. Yes.

3 Q. Are you aware of the fact that they have to be qualified  
4 to work with the Federal Government in that role?

5 A. Yes.

6 Q. Do you think an accusation of wage theft against an  
7 employee would be a problem in terms of working hand in hand  
8 with the Federal Government in that role?

9 A. Certainly could be.

10 Q. You testified in your deposition that at the time of  
11 Mr. Sanders' work with Union Pacific -- or I'm sorry, not  
12 Union Pacific. BNSF. I apologize. I'm getting my  
13 railroads confused here -- with BNSF, that his earning  
14 capacity was \$155,000 dollar a year? Do you recall that?

15 A. Yes.

16 Q. And I think you testified in your deposition that at the  
17 time of the deposition his earning capacity was 75,000 to  
18 88,000. Do you recall that?

19 A. Yes.

20 Q. And in fact, Mr. Sanders, since he's making \$82,000 a  
21 year right now has maxed out his earning capacity, right?

22 A. He's within the range that I outlined. Certainly he  
23 could increase to 88,000.

24 Q. But he's earning exactly what you projected at the time  
25 of your deposition to be his earning capacity today, right?

1 A. Correct.

2 Q. That's all the questions I have for you. Thanks.

3 THE WITNESS: You're welcome.

4 THE COURT: Ms. Ferguson?

5 MS. FERGUSON: Nothing further.

6 THE COURT: All right. Ms. Grobe Ranheim, you're  
7 excused. Thank you.

8 THE WITNESS: Thank you.

9 MR. JIM KASTER: Your Honor, I know we're going  
10 back and forth between witnesses -- here, I'll take this  
11 off -- but Plaintiff calls our next witness, who is Blaine  
12 Hoppenrath. I believe she's in the hall.

13 (Pause - witness retrieved)

14 THE COURT: Good afternoon, Ms. Hoppenrath. If  
15 you would, please, stand there between the railing and the  
16 witness chair and I'll invite the courtroom deputy to  
17 administer the oath at this time.

18 THE CLERK: Please state your full name for the  
19 record, spelling your first and last name.

20 THE WITNESS: Blaine Hoppenrath, B-L-A-I-N-E,  
21 H-O-P-P-E-N-R-A-T-H.

22 COURTROOM DEPUTY: Please raise your right hand.

23 **BLAINE HOPPENRATH, PLAINTIFF'S WITNESS, SWORN**

24 THE COURT: Please have a seat. Thank you.

25 Mr. Kaster?

1 MR. JAMES KASTER: Thank you, Your Honor.

2

3 **CROSS-EXAMINATION**

4 BY MR. JAMES KASTER:

5 Q. Good morning, Ms. Hoppenrath.

6 A. Good morning.

7 Q. If you're comfortable, you can take your mask off.

8 Have you testified in court before?

9 A. No.

10 Q. Okay. I'm going to ask you to answer my questions to  
11 the best of your ability, but if you don't understand my  
12 question, just let me know that. I'm happy to repeat it and  
13 rephrase, okay?

14 A. Okay.

15 Q. As I understand it, when you went to work at BNSF you  
16 had no prior experience with the railroad, correct?

17 A. That is correct.

18 Q. You started there in 2012?

19 A. Yes.

20 Q. As a management trainee.

21 A. Yes.

22 Q. Right out of college, I suspect.

23 A. Yes.

24 Q. As I understand it, you started in the office and then  
25 it was time for you to go out and learn about the railroad

1 industry in the field, right?

2 A. Roughly. My first position was I did have roles in the  
3 office, but I was also out in the field on a weekly basis.

4 THE COURT: I'm sorry, Mr. Kaster, if I could just  
5 interrupt.

6 MR. JAMES KASTER: Sure.

7 THE COURT: Ms. Hoppenrath, if you wouldn't mind,  
8 could you move just a little closer to that microphone so we  
9 can hear you a little better?

10 THE WITNESS: (Complies). Yes.

11 THE COURT: Thank you very much.

12 BY MR. JAMES KASTER:

13 Q. Then as I understand it, you took over a tie gang for a  
14 little less than a year, like nine months or something,  
15 right?

16 A. I don't recall the exact dates, but between being an  
17 assistant roadmaster on the production side and a  
18 roadmaster, it was about a year, year and a half.

19 Q. And it was at that point that you moved to St. Paul as  
20 the district roadmaster, correct?

21 A. Correct.

22 Q. And that would have been, what, in about April of 2015?

23 A. Roughly. March is what I recall.

24 Q. Okay. And then you stayed in that position until when?

25 A. Roughly April of 2017.

1 Q. As I understand it, you as a roadmaster had  
2 responsibility for about 30 miles of track.

3 A. It was 30 physical miles and I want to say it was about  
4 60 miles of mainline.

5 Q. You actually supervised, as I understand it, three  
6 different track inspectors during your stay there, right?

7 A. I had three track inspector bid positions. If they were  
8 all full, then yes.

9 Q. But for a lot of the time they weren't full.

10 A. Correct.

11 Q. And for some of the time it was only Mr. Sanders,  
12 correct?

13 A. Correct.

14 Q. He was holding down the track inspector responsibilities  
15 for the three different roles.

16 A. Correct.

17 Q. After you left St. Paul you went to Albuquerque,  
18 New Mexico, right?

19 A. Correct.

20 Q. And you worked there as the manager of roadway planning,  
21 right?

22 A. Correct.

23 Q. And that was actually a promotion from the district  
24 roadmaster position, right?

25 A. Correct.

1 Q. It was a step up and a pay increase.

2 A. Yes.

3 Q. While you were in St. Paul, Mr. Jones was your  
4 supervisor, right?

5 A. Yes.

6 Q. So he gave you instructions on a day-to-day basis; is  
7 that how that worked?

8 A. I wouldn't necessarily say that we talked every morning  
9 before work, but there was a general vision for where we  
10 wanted our -- or what we wanted our territory to be, so I  
11 did my -- to the best of my ability performed my duties to  
12 meet those expectations.

13 Q. And some of those expectations were his expectations,  
14 right?

15 A. Yes.

16 Q. I mean, he set out expectations for you as your  
17 supervisor, right?

18 A. Correct.

19 Q. During the course of your employment at BNSF, you  
20 received performance appraisals, correct?

21 A. Performance reviews? Correct.

22 Q. And you received one in 2015, and if we could pull up  
23 the exhibit just for the witness.

24 It should come up just on your screen.

25 Exhibit 16, please. Can you see that?

1 A. Yes.

2 Q. And Mr. Jones would have performed this performance  
3 appraisal for you at this time, correct?

4 A. He would input some of the feedback after I had  
5 performed a self-evaluation.

6 Q. And this was the performance appraisal you received for  
7 2015, correct?

8 A. I can't see the -- oh, yeah. Sorry. 2015, yes.

9 MR. JAMES KASTER: Offer Plaintiff's 16.

10 MS. DONESKY: No objection.

11 THE COURT: Thank you. It's admitted and may be  
12 published.

13 BY MR. JAMES KASTER:

14 Q. Let's go right to page 5 of 7. We're looking at your  
15 individual business objectives, and if we can blow up that  
16 section at the very top of velocity productivity. That's in  
17 the middle of the page. I'm sorry. In the middle of the  
18 page it says velocity productivity.

19 So velocity and productivity, velocity was one of  
20 the things that you were measured on in your position as a  
21 roadmaster, correct?

22 A. Correct.

23 Q. And one of the things that was an individual business  
24 objective for you:

25 "Understand the reason of every slow order on your

1 territory and have a plan in place to address the issue."

2 That was one of your business objectives under the  
3 velocity and productivity heading, right?

4 A. Yes.

5 Q. Now let's go to Plaintiff's 17, and this is another  
6 performance review, and again, it's dated 2015.

7 MS. DONESKY: On 17, hearsay, relevance.

8 THE COURT: Sorry, Mr. Kaster. I'm a bit lost.  
9 What's the exhibit number?

10 MR. JAMES KASTER: It's 17, Your Honor. I'm  
11 sorry.

12 THE COURT: Give me one moment if you would,  
13 please.

14 (Pause)

15 THE COURT: Mr. Kaster, go ahead and ask some  
16 questions here and I'll allow some preliminary questioning  
17 and see what the point of this is and decide the objection  
18 here as we go.

19 MR. JAMES KASTER: Okay. Thank you, Your Honor.

20 BY MR. JAMES KASTER:

21 Q. Actually, so we have some understanding since both of  
22 these are dated in 2015, the first exhibit we looked at was  
23 your mid-year performance evaluation or performance review,  
24 correct?

25 A. I don't know where it was specifically documented that

1 it was the mid-year, but I do recall that I had a mid-year  
2 and an end-of-year performance review.

3 Q. And this 17 would be the end-of-year for that time,  
4 right?

5       A. Again, I don't recall exactly where it says on the  
6       document that it was the, end-of-year, but I know that there  
7       was one.

8 Q. And in particular during this performance review, you  
9 were reviewed for your interactions with the people who  
10 reported to you, as well as your performance on productivity  
11 and velocity among other things, right?

12 A. Yes.

13 MR. JAMES KASTER: Offer Plaintiff's 17.

14 MS. DONESKY: Same objections.

15 THE COURT: What was the last question,  
16 Mr. Kaster?

17                   MR. JAMES KASTER: I think the question as best I  
18 can restate it was that this document contains her  
19 evaluation on her work with respect to the people who  
20 reported to her and, among other things, on the objectives  
21 related to productivity and velocity that we just discussed.

22 THE COURT: Do you intend to go into those  
23 questions in some detail?

24 MR. JAMES KASTER: Not great detail, Your Honor,  
25 but some. I mean, I have a couple questions on each point.

1                   THE COURT: I want to hear those questions before  
2 I admit the exhibit.

3 BY MR. JAMES KASTER:

4 Q. Do you recall -- and you may refresh your recollection  
5 with the document if need be -- that you were specifically  
6 reminded by Mr. Jones that being in your position was not a  
7 popularity contest?

8 A. I don't recall that specifically. I would have to look  
9 at the precise verbiage.

10 Q. Well, if you take a look at the first page of the  
11 document under "Appraisal by Mr. Jones," does that refresh  
12 your recollection?

13 A. I can see it here in the document.

14 Q. I'm sorry. Did you say you can see it or you can't?

15 A. I can see it here in the document where he states that.

16 Q. So does that refresh your recollection that's one of the  
17 things -- in fact, that's the first thing that Mr. Jones  
18 said to you, right?

19 A. It's the first thing that's written down.

20 Q. And in part of this performance evaluation process you  
21 actually do a self-review as well, correct?

22 A. Correct.

23 Q. And do you recall saying in your self-review something  
24 about having people at the Bluffs that are not afraid to  
25 approach others about unsafe behavior, which you described

1 as a positive. Do you recall that?

2 A. If I could read it, I probably did state that.

3 Q. All right. If you take a look at page 4 of 8 under  
4 "Appraisal by Blaine Nicole Hoppenrath."

5 A. (Witness complies). Okay. What was the question?

6 Q. Does it refresh your recollection to look at that  
7 document? That's what you described in your own  
8 self-review.

9 A. Yeah.

10 Q. And do you recall Mr. Jones again reminding you in that  
11 performance evaluation that you needed to know the basis  
12 upon which every slow order was issued?

13 A. It was -- yeah, I mean, I see it in the document. It's  
14 definitely a good practice to understand what's going on in  
15 the territory.

16 Q. Mr. Jones was particularly concerned about slow orders  
17 throughout the time that you worked for him, correct?

18 A. It was one of many different focuses. It was something  
19 that had high visibility in our department and on our  
20 division.

21 Q. Did you say it had high visibility?

22 A. Yeah.

23 Q. Thank you.

24 MR. JAMES KASTER. Again offer Exhibit 17.

25 THE COURT: I'll sustain the objection to this. I

1 think you've gotten what you need through the questions  
2 you've asked.

3 MR. JAMES KASTER: Thank you, Your Honor.

4 BY MR. JAMES KASTER:

5 Q. I'm going to change subjects on you a little bit on time  
6 reporting. Do you recall the system called PARS?

7 A. Yes.

8 Q. And do you recall issuing a directive at some point in  
9 2015, a notice to the people who worked for you, that all  
10 persons entering time in PARS had to report time daily? Do  
11 you recall that?

12 A. Yes.

13 Q. And did you -- when you indicated that, did you  
14 indicate to the -- by the way, just so we have a sense of  
15 this, how many employees reported to you?

16 A. I had roughly 15. That would vary on different times of  
17 the year, but 15 was the average over the couple years that  
18 I was there.

19 Q. Did you direct employees as to whether or not they  
20 should input their time in draft or final, do you recall?

21 A. I don't recall exactly what I would have specified.

22 Again, I had sent out expectations that by the end of the  
23 day that she should accurately report their time before they  
24 leave.

25 Q. So would that be a suggestion that the time should be in

1 final?

2 A. Yes.

3 Q. And you actually were rated on making sure that the  
4 people who reported to you reported their time in a timely  
5 way, that was on-time reporting is what it was called,  
6 right?

7 A. Can you clarify what you mean by we were rated on?

8 Q. Were you -- I guess the question -- were you in any way  
9 reviewed or evaluated for ensuring that the people who  
10 reported to you in turn reported their time?

11 A. It was a metric that we used as a means to manage our  
12 territory.

13 Q. A metric on your scorecard?

14 A. No.

15 Q. A metric on what?

16 A. I don't recall specifically how that report was -- I  
17 don't know if it was like an auto-generated email or  
18 something that we went in and looked at every day, but it  
19 was a metric that we used -- I don't recall specifically how  
20 often we discussed it. If we did, it would have been on a  
21 like division engineer type call.

22 Q. Do you recall giving any of the employees or  
23 participating in any training on entering time in PARS?

24 A. I don't.

25 Q. So do you know whether or not Mr. Sanders or other

1 persons in positions like him would have had any specific  
2 training on how to enter time in PARS?

3 A. I don't know how that training occurred.

4 Q. If it did.

5 A. I don't know.

6 Q. Mr. Sanders had a laptop, correct?

7 A. Correct.

8 Q. As a track inspector, right?

9 A. Yes.

10 Q. So he could effectively work remotely.

11 A. Define remotely. Do you mean off property or remotely  
12 within his job description?

13 Q. What I mean is -- so let me be clear. There's a  
14 physical station house, right?

15 A. Correct, yes.

16 Q. And in fact, if you go right down the street here to  
17 Jackson and turn right and turn left and go a couple miles  
18 along the river, you get to Dayton's Bluff. It's right  
19 there.

20 A. Correct.

21 Q. Mr. Sanders did not work at the station house, right?

22 A. We reported to the station house. We reported to  
23 Dayton's Bluff.

24 Q. Okay. But the work that he did --

25 A. The complexities of the job require to be out in the

1 field on the track which did require a laptop where you  
2 could access our network remotely.

3 Q. You agree Mr. Sanders could be a very hard worker,  
4 right?

5 A. He could be.

6 Q. He worked seven days a week sometimes.

7 A. Sometimes, yes.

8 Q. And we talked about the fact that he inspected both the  
9 mainline and the yard for a period of time, right?

10 A. Yes.

11 Q. In fact, as I understand your testimony here today, for  
12 a period of time he was doing the job of three people.

13 A. Correct.

14 Q. And if you needed someone, he would come and help out,  
15 right?

16 A. Sometimes.

17 MR. JAMES KASTER: May I provide a copy of the  
18 deposition to the witness, Your Honor?

19 THE COURT: Yes.

20 BY MR. JAMES KASTER:

21 Q. Ms. Hoppenrath, I'm providing you with a copy of your  
22 deposition.

23 If you take a look at -- this is a squish copy, so  
24 you see four pages on one page. I'm going to ask you to go  
25 to page 46.

1 A. (Witness complies).

2 Q. Because you were asked the very same question in your  
3 deposition, page 46, line 6:

4 "Was he generally willing to fill in and take on  
5 extra duties and hours if requested?

6 And your answer was: "If I needed someone, he  
7 would help out."

8 Do you recall?

9 A. I'm looking at the document, so I see what you're saying  
10 there. I guess when I said "sometimes" I was referring to,  
11 like, there were probably instances where he needed time  
12 off, so there were some times where he wouldn't have been  
13 able to help out.

14 Q. If he was physically able to help out, he would help  
15 out, right?

16 A. I don't know. I mean --

17 Q. I know you haven't been here for this trial, but let me  
18 just ask you a question.

19 Did you often call Mr. Sanders at home and demand  
20 that he come in?

21 A. Per the union agreement when we had callouts from our  
22 maintenance desk, there was a prescribed order that I would  
23 have to follow to have people come in to address the issue.  
24 So oftentimes because he was the track inspector, he would  
25 be the first person on that call.

1 Q. So you did call him at home and demand that he come in.

2 A. I never demanded that he came in, but per the agreement  
3 I am required to call him.

4 Q. And in particular when Mr. Sanders was the only track  
5 inspector, he would be the one and only one receiving those  
6 calls, right?

7 A. Not necessarily. If he was unavailable, then we would  
8 go to the next qualified individual. That may or may not be  
9 a track inspector. It depended on the roster at the time.

10 Q. Did you also call Mr. Sanders at home and complain about  
11 slow orders?

12 A. I don't recall.

13 Q. One of the reasons why Mr. Sanders would have to come  
14 in, especially when he was the only track inspector, was to  
15 perform the critical sequences for frequency for the FRA.

16 A. Can you restate the first part of that statement?

17 Q. Sure. When he was in a position alone, in that position  
18 alone, he might have had to do all the inspections for all  
19 track to meet the frequency of BNSF and FRA inspection  
20 requirements, right?

21 A. The inspections were a requirement, like from our EI and  
22 from the FRA. As far as him solely doing it, he would be  
23 the first option based on the Collective Bargaining  
24 Agreement to complete those inspections. That doesn't mean  
25 it had to be him, but he was the first one to be offered the

1 overtime.

2 Q. So you're saying he wasn't required to do it.

3 A. He would have had the option to say no and then we would  
4 have had to figure another alternative.

5 Q. Take a look at your deposition, page 39, line 8, please.

6 A. (Witness complies).

7 Q. "Question: During the periods when Mr. Sanders was the  
8 only track inspector, is he required then to do inspections  
9 on the entire section of track under your direction?

10 "Answer: To meet BNSF and FRA inspection  
11 frequencies, yes."

12 MS. DONESKY: Objection. Improper impeachment.

13 THE COURT: Overruled.

14 BY MR. JAMES KASTER:

15 Q. Now, one --

16 THE COURT: Wait. Hold it. Is there a question?  
17 You just read deposition testimony. Is there a question of  
18 the witness?

19 MR. JAMES KASTER: No, Your Honor. I'm moving to  
20 the next question.

21 BY MR. JAMES KASTER:

22 Q. Prior to March of 2016, you did not discipline  
23 Mr. Sanders, correct?

24 A. I don't recall. I don't believe so.

25 Q. If we go -- change the subject again back to the TIMS

1 system, this was a system that was a computer-based system,  
2 correct?

3 A. Correct.

4 Q. Now, employees did not punch a clock at BNSF, right?

5 A. Correct.

6 Q. They were filling out their own time sheets, right, or  
7 inputting their own time?

8 A. Can you just go back? You were talking about TIMS? Is  
9 that what you're saying they're entering their time?

10 Q. PARS. I'm sorry.

11 A. Okay.

12 Q. I misspoke, I think. I'm sorry.

13 A. I just wanted to clarify, but PARS was the time  
14 reporting system.

15 Q. Yes.

16 A. TIMS was a different system.

17 Q. Okay. My mistake. Sorry.

18 So PARS was the timekeeping system and we'll talk  
19 about PARS a little bit, but the employee himself or herself  
20 entered their own time, correct?

21 A. Correct.

22 Q. And so Mr. Sanders would have been responsible for  
23 entering his own time, correct?

24 A. Correct.

25 Q. And you agree, as I understand your testimony, you

1 issued this request or requirement to the people reporting  
2 to you that they do that daily, right?

3 A. Correct.

4 Q. Not everybody did it daily, right?

5 A. I don't have any -- I mean, I don't have documents in  
6 front of me, but I'm sure there were examples where that was  
7 missed.

8 Q. But that's what you wanted them to do was enter it  
9 daily.

10 A. That would have been the correct behavior.

11 Q. And they could actually enter their time before they  
12 completed work for that day, right?

13 A. They could.

14 Q. There was no prohibition against that.

15 A. It was not a best practice, no. It was never something  
16 that I asked my employees to do.

17 Q. But again, there was no specific training on that  
18 subject, right?

19 A. Correct.

20 Q. And then employees could go back in before the end of  
21 the pay half and modify or change their time if the time  
22 that they worked ended up being more or less, right?

23 A. They had that ability, but it was the expectation that  
24 they accurately reported it on the day of their work.

25 Q. They could modify their time before the end of the pay

1 half, right?

2 A. Yes.

3 Q. There were no performance evaluations, so to speak, for  
4 track inspectors, correct?

5 A. Are you saying similar to like what we would go through?

6 Q. Right, yeah.

7 A. Correct.

8 Q. And in fact, what there were evaluation forms based upon  
9 a ride-along, right?

10 A. Correct.

11 Q. And if we direct your attention to Plaintiff's 84 -- if  
12 we could pull up Exhibit 84.

13 This is actually a track inspector evaluation form  
14 for Mr. Sanders for the date 3-18, 2016, and you evaluated  
15 Mr. Sanders on that day, right?

16 A. That's what this reflects.

17 Q. I may have been missing something, but I don't see  
18 another track inspector evaluation form filled out by you  
19 for Mr. Sanders. Are there others?

20 A. I thought there were. I don't recall specifically who I  
21 filled them out for and the frequency of them.

22 Q. In any case, this is the form that you would fill out  
23 that would be the documentation of whatever evaluation you  
24 were doing of a track inspector based upon you riding along.

25 A. Correct.

1 Q. And you would decide when you wanted to do that as the  
2 roadmaster, effectively Mr. Sanders' supervisor, correct?

3 A. Correct.

4 Q. There were times where you went to check on Mr. Sanders  
5 as his supervisor, correct?

6 A. Yes.

7 Q. And you can't recall a time when you came upon  
8 Mr. Sanders and he was not being efficient, right?

9 A. Can you repeat the question?

10 Q. Sure. You cannot recall a time when you came upon  
11 Mr. Sanders and he was not being efficient.

12 A. I can't recall a specific time.

13 Q. And you never issued discipline to him for not being  
14 efficient.

15 A. No. No, I didn't.

16 Q. Mr. Sanders often reported defects or slow orders as a  
17 part of his job as a track inspector, right?

18 A. Right.

19 Q. You do remember that he was good at identifying defects,  
20 right?

21 A. I think overall he was good identifying and detected  
22 defects.

23 Q. You never had the feeling from a hi-rail trip with him  
24 that he was reporting things that were not defects?

25 A. Sorry. Can you say that one more time?

1 Q. Sure. I'm happy to do that. It has that negative --  
2 maybe double negative.

3 A. Yes.

4 Q. You don't recall a time when you rode along with  
5 Mr. Sanders that he was reporting things that were not  
6 defects.

7 A. Correct. I don't recall him reporting things that were  
8 not defects.

9 Q. You would get calls from your own supervisor, Mr. Jones,  
10 when Mr. Sanders reported a defect or a slow order, from  
11 time to time you would get those calls, right?

12 A. From time to time, yes.

13 Q. And when asked earlier in your deposition if Mr. Jones  
14 called concerned about those defects, I think you said,  
15 "Absolutely." Do you recall that?

16 A. So the question is do I recall Mr. Jones calling me  
17 about slow orders from time to time? Yeah. I don't --  
18 like, I don't recall a specific example, but I do remember  
19 having conversations about slow orders.

20 Q. And do you recall Mr. Jones raising his voice during  
21 those conversations?

22 A. I don't remember specifically. There were times where I  
23 think we were both frustrated where the voices would get  
24 raised, but I can't identify one slow order that would have  
25 a corresponding phone conversation.

1 Q. Do you recall Mr. Jones cursing --

2 A. Yes.

3 Q. -- during those calls?

4 A. Sometimes.

5 Q. Do you recall that on one occasion you actually took a  
6 slow order out of the system? I think you described that as  
7 a mistake.

8 A. Like I made the mistake by removing the slow order? I  
9 don't recall specifically what you're referring to. I know  
10 there was a slow order that was put in place, so I do have  
11 recollection of a time where a slow order was -- the slow  
12 order was set for, let's say, 40 miles an hour and the  
13 actual track speed was 25, so it doesn't make sense to have  
14 a slow order that's above the original track speed. Again,  
15 those are just numbers for context. I don't remember the  
16 specifics. And I do remember calling and removing that slow  
17 order because it didn't need to be there.

18 Q. Sure. You were asked earlier if your supervisors were  
19 frustrated about slow orders -- by that I mean in your  
20 deposition -- and you said, "Frustration is not the right  
21 word." Do you recall that?

22 A. Vaguely.

23 Q. So what is the right word?

24 A. I don't know if there's just one word that you could use  
25 to describe it. It was something we were going to have to

1 manage through. So there's a slow order that goes in place  
2 and I think there -- there's more than just one word, right?  
3 It disrupts the daily plan, now we're changing plans and  
4 we're going to go through a process and we're going to get  
5 it done because it's the right thing to do, but I don't -- I  
6 mean, I don't know if there's one specific word.

7 Q. Why is it the right thing to do?

8 A. Why is it the right thing to do to put a slow order on?

9 Q. Right.

10 A. So we don't derail a train, so we can protect the trains  
11 getting from point A to B.

12 Q. And in part because if a track inspector like  
13 Mr. Sanders sees something justifying a slow order, he's  
14 obligated under law to put that slow order in place, right?

15 A. Correct.

16 Q. I mean, you're aware of that, right?

17 A. Yeah.

18 Q. In any case, I think you said that with respect to these  
19 slow orders that were put in place, Mr. Jones was frustrated  
20 and you were frustrated, right?

21 A. Are you talking in general about slow orders or a  
22 specific slow order?

23 Q. I'm talking in general.

24 A. I think they're just a fact of life that we would  
25 have to -- that was our job, like, we put slow orders, we

protected the track, and then we mitigated the risk and  
created a plan to fix them. So for every slow order to say  
that we were frustrated, I don't necessarily think that  
that's 100 percent accurate.

5 Q. There were certainly times when you were frustrated or  
6 he was frustrated, right?

A. I think that would be accurate.

8 Q. And these slow orders and defects were slow orders and  
9 defects that were oftentimes reported by Mr. Sanders, right?

10 A. Correct.

11 Q. At some point in time in November and early December of  
12 2015, Mr. Sanders made a human resources complaint about  
13 you, right?

14 A. I -- apparently. I don't know if I've ever really seen  
15 the final conclusion about that.

16 Q. You are aware that he made a human resources complaint  
17 against you, right?

18 A. Yes. Or let me rephrase that. I'm aware that he called  
19 the hotline. I don't know unless like a document's put in  
20 place that it was specifically about me.

21 Q. It was the only complaint ever made that related to you  
22 that you knew about, right?

A. I -- I don't think so.

24 MR. JAMES KASTER: If we can pull up Exhibit 103,  
25 page 43. If we can blow up on the bottom of the page from

1 line 12. Actually, line 10 to the bottom, please. Thank  
2 you.

3 BY MR. JAMES KASTER?

4 Q. Mr. Mozinski at the investigative hearing -- you recall  
5 being at the investigative hearing, right?

6 A. Yes.

7 Q. Asked you how many HR complaints have been ever filed  
8 against you and you said, "I know of one," right?

9 A. Correct.

10 Q. And Mr. Mozinski asked you: "And who was that by?"

11 A. Mr. Sanders. Yeah. So at this time, like, I had been  
12 formally interviewed and had been working with someone in  
13 HR, with Mr. Spire. I know that that was one.

14 I know there was an instance prior where he  
15 contacted the hotline in HR. So there were just several  
16 instances and I just don't know which ones you're  
17 specifically asking for.

18 Q. Well, Mr. Sanders, I think the record reflects, made an  
19 HR complaint in late November and met with human resources  
20 on December 7th. Did you know that at the time?

21 A. I don't recall specifically. I don't recall the  
22 specifics, but I know based on, like, some records and  
23 things that have been brought to my attention that I  
24 arranged for him or had worked with our HR -- I believe it  
25 was Magenta -- for them to talk, and that's --

1 Q. You arranged for Mr. Sanders to talk to HR?

2 A. I don't know if I specifically arranged for it, but I  
3 gave Magenta the leeway to set up a time. That's what I  
4 recall.

5 Q. So we're talking back in November-December of 2015; is  
6 that your recollection?

7 A. Yes.

8 Q. So you're saying that Mr. Sanders talked to you --

9 A. I don't recall who talked to me or if it was Magenta  
10 that reached out to me or, like, the exact progression of  
11 events that led them to being able to have their  
12 conversation.

13 Q. But you found out about this conversation at the time.

14 A. At some point in that general time frame.

15 Q. Well, I'm not -- I'm being specific now. I'm asking you  
16 about late November, early December of 2015. Is that the  
17 time period you're describing?

18 A. Yes.

19 Q. Sometime in December of 2015, you took the right to  
20 Mr. Sanders to drive his work truck home away from him,  
21 right?

22 A. I don't recall the exact dates. I do recall that he was  
23 going to go on vacation and so we had him leave his work  
24 truck at the facility -- or at Dayton's Bluff in the event  
25 that we would need to utilize that.

1 Q. So sometime in that time frame you did in fact tell  
2 Mr. Sanders that he could not take a BNSF truck home to do  
3 his job, right?

4 A. At some point, yes.

5 Q. And do you think that some point was in or around  
6 December of 2015?

7 A. Yes.

8 Q. And at some point in mid-December of 2015, you changed  
9 Mr. Sanders' work hours from 4/10s to 5/8s, right?

10 A. Yes.

11 Q. Mr. Sanders for a period of time transferred away from  
12 your district and went to work in Northtown, right?

13 A. Yes.

14 Q. And I think the record reflects that he transferred back  
15 on March 15th of 2016. Do you recall that?

16 A. I recall him coming back, but I don't remember the exact  
17 dates.

18 Q. Well, I think the record is clear about this, that he  
19 came back on the 15th. You don't have a different  
20 recollection, right?

21 A. I don't have anything that would say otherwise.

22 Q. And we looked at that Exhibit 84 before and I want to  
23 clear up something here about the 18th, because the 18th was  
24 the ride-along performance review -- I don't know if you  
25 call it that, but that performance --

1 A. The track inspector evaluation.

2 Q. Correct. Thank you. That was the date on that Exhibit  
3 84 that we just looked at. Do you recall that?

4 A. One more time.

5 Q. Sure. The date on that form that we were looking at,  
6 the ride-along, was March 18th of 2016. Do you recall that?

7 A. I recall the exhibit.

8 Q. Okay.

9 MR. JAMES KASTER: Let's for the witness as a  
10 courtesy, we'll pull that exhibit back up so you can see the  
11 date on it.

12 A. Yup.

13 Q. Do you see the date March 18th? You can look at your  
14 screen. You don't have to turn your head around.

15 A. Yeah, March 18th of 2016.

16 Q. And I think the record will reflect that that was a  
17 Friday. Do you recall that?

18 A. I believe that it was.

19 Q. I want to clear up something, because I'm going to show  
20 you what you said in the investigative transcript.

21 If we can pull up -- let's pull up page 38 of  
22 Exhibit 103, please. And if we can just blow up the bottom  
23 of the page for everyone, because we're talking about  
24 your -- the day of your first suspicion about time  
25 exaggeration or time theft, and I think you describe it here

1 as Thursday the 18th. Do you see that?

2 A. Yes.

3 Q. But it actually was Friday. The 18th was a Friday,  
4 right?

5 A. I don't have a calendar in front of me and I -- I  
6 don't -- it's too far back.

7 Q. Sure. Let's pull up another exhibit and see if we can  
8 make this clear. If we can pull up Exhibit 165. And not  
9 all the exhibit, so it's just page 5.

10 We can see a calendar. This is an actual  
11 calendar. We can see that the 18th was a Friday. Do you  
12 see that?

13 A. Okay.

14 Q. And this is Mr. Sanders' calendar, so I'll just tell you  
15 that the calendar says: "Ride with Blaine," and then it  
16 says: "Leave early on Friday" if I can read that  
17 handwriting. Do you see that?

18 A. I do see that.

19 Q. And so do you believe that that was the day that you  
20 rode along with Mr. Sanders, it was a Friday the 18th?

21 A. I couldn't say for certainty. Looking back at it,  
22 again, either I messed up the date and it should have been  
23 the 17th or we were gone on the 18th.

24 Q. Well, let me ask you the question this way, and I don't  
25 want to cut you off if you have something more to say.

1                   Do you have an independent recollection that it  
2                   was a Friday or a Thursday?

3       A. Of the -- the day of the ride-along?

4       Q. Right.

5       A. I don't.

6       Q. Okay. So you would have to rely on the records to  
7                   refresh your recollection about what the date was, what day  
8                   it was.

9       A. So at some point of those several days I had done a  
10                  ride-along. As to what date I exactly entered that  
11                  ride-along and what day it actually happened I don't  
12                  specifically recall.

13      Q. And as I understand it, that was the first day that you  
14                  had any specific suspicion that Mr. Sanders was exaggerating  
15                  his time, right?

16      A. I had a suspicion that just something wasn't adding up  
17                  that I needed to explore further.

18      Q. Would it be fair to say that there was nothing concrete  
19                  that you had before that day?

20      A. I think it was -- concrete would a way to say it, yeah.

21      Q. A way to say what?

22      A. That I had nothing concrete. I think that was the first  
23                  time where there was, like, a triggering moment.

24      Q. So that was --

25      A. Something wasn't adding up.

1 Q. Something wasn't adding up. That was the triggering  
2 moment that day.

3 A. Yes.

4 Q. Okay. And as I understand it, Mr. Sanders told you that  
5 he needed to leave by 3:00.

6 A. That was what I had understood.

7 Q. And you looked around at 3 o'clock or something like  
8 that and he was not there.

9 A. It would have been a little bit before 3:00.

10 Q. A little bit before 3:00. Like how much?

11 A. Like -- probably like 2:30, 2:45.

12 Q. Do you have an independent recollection of when it was?

13 A. I remember towards the end of the day everyone was at  
14 the shack wrapping up for the day, and typically -- I mean,  
15 not typically -- people don't leave until 3:00 on the nose,  
16 and so for him to have left anytime before 3 o'clock -- I  
17 remember it as somewhere between 2:30 and 2:45 looking  
18 around and him not being there.

19 Q. You don't have any documentation of that day, right?

20 A. No.

21 Q. Did you have notes at one point?

22 A. As far as that specific day?

23 Q. Right.

24 A. No, I don't recall.

25 Q. You don't have a recollection of when Mr. Sanders

1 started that day?

2 A. I didn't take exception to when he started that day.

3 Q. Not my question. Sorry. You don't have a recollection  
4 of when he started that day.

5 A. No.

6 Q. You don't know how many hours he reported for the day.

7 A. No.

8 Q. You acknowledge that Mr. Sanders told you consistent  
9 with his calendar entry that he had to leave early.

10 A. Say that again?

11 Q. Do you acknowledge that consistent with his calendar,  
12 Mr. Sanders told you that he had to leave early?

13 A. I see that in his calendar he says he has to leave at  
14 3:00. That is not what I understood. That's not what I  
15 believe that he told me. I believe that he said he had to  
16 leave by 3:00 and those are two totally different planning  
17 aspects.

18 Q. So he told you, according to what you understood, that  
19 he had to leave by 3:00, and by your recollection without  
20 notes you think you he may have left at early as 2:45.

21 A. Correct.

22 Q. And that was the triggering moment.

23 A. Yes.

24 Q. You've never surveilled -- pardon me -- at the time,  
25 this was the first employee you ever surveilled.

1 A. I mean, it was my job to observe my people doing their  
2 jobs, so it wouldn't have been the first time I've checked  
3 on my employees.

4 Q. Sure. Did you ever -- and just out of curiosity, I  
5 think the record reflects-- and you can confirm this -- that  
6 you got a rental car for that purpose, right?

7 A. No.

8 Q. You didn't?

9 A. I had a rental car. I did not get a rental car for this  
10 purpose.

11 Q. If we can pull up page 98 of Exhibit 98, please. So why  
12 don't we blow up from 11 down to the bottom of the page.  
13 Oh, I'm sorry. Let's go to the top of the page first.

14 It says: "You were in an unmarked car?" Do you  
15 see that? You said: "Yes."

16 A. Yes.

17 Q. "So I'm guessing BNSF rented the unmarked car?" The  
18 answer was: "Yes."

19 A. Correct. It was a BNSF rental, but I did not rent it  
20 for the purposes of this weekend.

21 Q. Okay. Just stay with me for a moment if you would.

22 "And you would need your supervisor's approval for  
23 that, correct?" And your answer was: "To rent a car?" And  
24 Mr. Mozinski said: "Yeah." And you said: "Yes."

25 Do you see that?

1 A. Yes.

2 Q. So was there a specific design around having an unmarked  
3 car that day?

4 A. What do you mean?

5 Q. Was that a part of whatever conversation you had with  
6 Mr. Jones? Was it with Mr. Jones that you talked about  
7 getting this car?

8 A. So I did have a conversation with Mr. Jones that was a  
9 result of that day that we previously talked about. But as  
10 far as like wanting to observe Mr. Sanders without being in  
11 a BNSF marked vehicle, we had a conversation on the means to  
12 do that.

13 Q. And his suggestion was what?

14 A. At the time his BNSF-marked car was in the shop, or at  
15 least that's what I recall, and so he so happened to have a  
16 rental. And so he said that I could just take his for the  
17 weekend and he would take my BNSF vehicle for the weekend.

18 Q. Do you have a personal car at the time?

19 A. Did I have a personal car? Yes.

20 Q. Why not use the personal car?

21 A. Because it -- in my opinion, it was because it was  
22 work-related and there's just risk of driving my personal  
23 vehicle on railroad right-of-way. It made sense to have a  
24 vehicle essentially that -- I want to say company vehicle,  
25 but that's not accurate because it was a rented vehicle, but

1 something that BNSF essentially provided.

2 Q. Was the point that it was unmarked?

3 A. Was the point that -- I mean, yeah, I wanted to be -- or  
4 it made sense to be in an unmarked vehicle.

5 Q. As I understand it, you actually sat in the unmarked  
6 vehicle across the tracks.

7 A. At one point.

8 Q. There are multiple tracks, like six tracks there, right?

9 A. Yeah.

10 Q. And trains often pass back and forth.

11 A. Yup.

12 Q. So you were on the opposite side of six or more railroad  
13 tracks from the station house.

14 A. Yeah. I don't know the exact number of tracks.

15 Q. So had you ever done that before, where you sat in an  
16 marked car watching an employee from a distance?

17 A. Like specifically based on, like, a suspicion? No.

18 Q. By the way, you say -- so let's just focus in on this,  
19 because it's 3 o'clock on a Friday afternoon when you have  
20 this triggering moment, right?

21 A. Yes.

22 Q. So the next morning you're out in the unmarked rental  
23 car across the tracks from Mr. Sanders' station house,  
24 right?

25 A. Correct.

1 Q. Early in the morning.

2 A. Correct.

3 Q. You arrived at what time?

4 A. And we're talking about the 19th, correct?

5 Q. Correct.

6 A. Roughly 8 a.m.

7 Q. When you say "roughly 8 a.m." --

8 A. I mean, I noted it to be 8 a.m. and that's I believe  
9 what I said in my investigation. So at 8 a.m. I didn't see  
10 him.

11 Q. You were actually posting on Instagram at 8:30 a.m.,  
12 right?

13 A. Yeah. Yes, I was.

14 Q. From your car?

15 A. I don't recall specifically where I was at. I think I  
16 made several posts that morning.

17 Q. Did you go to a coffee shop?

18 A. I did.

19 Q. What time did you go to the coffee shop?

20 A. I don't recall the exact sequence of events. I recall  
21 at 8 being at the Bluffs and not seeing Mr. Sanders, at 8:30  
22 being back at the Bluffs and not seeing Mr. Sanders'  
23 personal vehicle, and then at 9:15 I came back and his  
24 personal vehicle was there. So I don't remember if it was  
25 the first 30 minutes I wasn't there or the second 45 minutes

1       when I went to the coffee shop, but it was within one of  
2       those two breaks.

3       Q. So you can't tell us how long you were at the coffee  
4       shop.

5       A. No.

6       Q. There's not a coffee shop down there in that area. You  
7       must have come back into St. Paul or something.

8       A. Yeah, it was a little ways from St. Paul.

9       Q. So what coffee shop did you go to?

10      A. I think it's called Quixotic.

11      Q. Which is where?

12      A. It's in St. Paul. I don't know the cross streets.

13      Q. Was that where you did your posting?

14      A. It might have been. Again, I don't recall specifically  
15       where I posted from.

16      Q. Your entire job that day was to watch and observe  
17       Mr. Sanders, right?

18      A. That's what I had gone into work on my off day for.

19      Q. And you can't tell us how long you spent that morning in  
20       the coffee shop posting on Instagram?

21      A. My recollection is it takes a couple, like maybe a  
22       minute or two, to post. So I know I went to the coffee  
23       shop. I didn't spend an extraordinary amount of time on it.

24      Q. Well, the time that I'm curious about, really, is the  
25       time at the coffee shop, not necessarily how long it took

1 you to post those posts. You don't know how long you were  
2 at the coffee shop.

3 A. I know that I was at Dayton's Bluff at 8:00, 8:30, and  
4 9:15. As to the exact time I spent driving somewhere,  
5 coming back, I don't have that.

6 Q. I think you said in the investigative hearing you did  
7 not physically see Mr. Sanders at 8:30. Do you recall  
8 saying that?

9 A. Yes.

10 Q. You were actually posting on Instagram exactly at 8:30,  
11 right?

12 A. That's what everything says.

13 Q. If you go to Dayton's Bluff, you walk around -- and I  
14 don't know if it was like this at the time, but there are  
15 lights on big poles and cameras all around the station  
16 house. Do you recall that?

17 A. Not specifically.

18 Q. BNSF has cameras on its properties around its station  
19 houses, right?

20 A. I believe so. Yeah.

21 Q. I mean, there's a lot of expensive equipment at the  
22 station houses, right?

23 A. Yes.

24 Q. So the cameras make sense for security purposes.

25 A. I don't know what their intent was.

1 Q. Did you ever check to see if the cameras reflected  
2 Mr. Sanders' comings and goings?

3 A. No. Again, I don't know specifically or I don't recall  
4 specifically where those cameras were, so I don't recall  
5 looking into that.

6 Q. Bridal Veil is the same. There are cameras.

7 A. I don't know specifically where these cameras are. I  
8 can't speak to that.

9 Q. Mr. Sanders had just come back to Dayton's Bluff a few  
10 days before that, right?

11 A. According to the documents, yes.

12 Q. Employees have a locker, right?

13 A. There are lockers at Dayton's Bluff, yes.

14 Q. I mean, Mr. Sanders did not have a locker because he  
15 just came back to Dayton's Bluff, right?

16 A. I don't recall specifically.

17 Q. So you don't have a recollection of where his locker  
18 was.

19 A. I know at some point he had talked about having a locker  
20 at Bridal Veil, so ...

21 Q. Mr. Sanders is able to -- by the way, let's back up a  
22 second.

23 Do you recall telling Mr. Sanders that he needed  
24 to clean out his locker at Bridal Veil?

25 A. I don't remember the specifics, but there was a

1 conversation about where he was reporting and that needed to  
2 be to Dayton's Bluff.

3 Q. Okay, but my question is a little different.

4                   Do you recall telling him that, "I don't want you  
5 to have a locker at Bridal Veil"?

6 A. I don't recall phrasing it like that. I recall if he  
7 wanted to keep stuff at Bridal Veil, that was his  
8 prerogative, but at the beginning of the day, like, we  
9 needed to be at Dayton's Bluff. That's where he was  
10 reporting. And again, I don't recall the specifics, but  
11 like my interpretation was I wasn't going to provide time to  
12 shuttle back and forth to get stuff out of a locker that  
13 wasn't at their reporting location.

14 Q. So let me ask the question this way: Do you have an  
15 independent recollection that you did not tell Mr. Sanders  
16 to clean out his locker at Bridal Veil?

17 A. I'm going to need you to repeat that, and then, is  
18 there any way I can get some more water?

19 Q. I'm sure.

20                   (Pause - water supplied)

21 A. Thank you.

22 Q. Whenever you're ready.

23 A. Go ahead.

24 Q. So let me rephrase the question or repeat it.

25                   Do you have an independent recollection that you

1 did not tell Mr. Sanders to clean out his locker at Bridal  
2 Veil?

3 A. The negatives are confusing me. I mean, I think at some  
4 point I told him to or I might have.

5 Q. All right. And you don't have an argument that -- well,  
6 let me put it this way:

7 You don't object to an employee like Mr. Sanders  
8 cleaning out his locker on company time.

9 A. Again, this was a long time ago, so if it was something  
10 that needed to be done, I would think that I would have  
11 allowed him to clean it out, to bring all of his stuff to  
12 Dayton's Bluff, and it wasn't worth an argument over if it  
13 was going to be on company time or personal time. Again,  
14 that's a long time ago and I don't have, like, specific  
15 recollections of the conversation.

16 Q. By the way, before you showed up there that morning on  
17 the 19th, did you have conversations with anyone besides  
18 Mr. Jones about what you were going to do?

19 A. Not that I recall. It might have come up with another  
20 roadmaster, but I don't -- I don't specifically recall. I  
21 recall our conversation.

22 Q. How about labor relations? Did you talk to them?

23 A. I don't think that prior to the 19th we had talked to  
24 them. I don't recall. I know there were conversations  
25 afterwards with labor relations, but I don't remember

1 anything.

2 Q. How about HR? Did you talk to them?

3 A. No, I don't remember talking to HR.

4 Q. You were sitting across the tracks in a rental car for  
5 the time period that you were there some 50 yards away from  
6 the station house, right?

7 A. Roughly.

8 Q. Were you looking for something specific from  
9 Mr. Sanders?

10 A. What do you mean, like --

11 Q. Were you focused on whether or not he would be  
12 committing some kind of time violations or was it broader  
13 than that?

14 A. I was curious to see when no one was watching what his  
15 day looked like on a weekend.

16 Q. So you weren't focused in specific on time issues.

17 A. I was or was not?

18 Q. You were not.

19 A. I would say that I was focused on time issues.

20 Q. Okay. But you were looking in general for what his day  
21 looked like when no one was watching.

22 A. Right.

23 Q. For any violation.

24 A. I mean, if something were to have come to fruition, it  
25 would have been addressed, but mostly when he was coming and

1 going.

2 Q. But not exclusively when he was coming and going.

3 A. No.

4 Q. You had notes of that day, the 19th, right?

5 A. I would imagine I wrote something down, but I didn't  
6 keep them for very long.

7 Q. You threw them out.

8 A. At some point.

9 Q. When you say "at some point," when did you throw out  
10 your notes of that day?

11 A. I had used the notes to compare them to other records  
12 and then used those for the investigation, so I don't know  
13 when I would have got rid of them, but I recall, like,  
14 formalizing my data for the investigation.

15 Q. And then you threw them out.

16 A. At some point.

17 Q. You don't have any idea what Mr. Sanders was doing  
18 before you first saw him at Dayton's Bluff that day, right?

19 A. Correct.

20 Q. And you don't have any idea what he was doing after he  
21 left your view at Dayton's Bluff that day, right?

22 A. Correct.

23 Q. You acknowledge, as I understand it, that Mr. Sanders  
24 said that for part of that day he had inspected track from  
25 his personal vehicle, right?

1 A. Can you repeat the first part?

2 Q. Sure. You acknowledge that Mr. Sanders has said that  
3 for part of that day he inspected track from his personal  
4 vehicle. Do you recall?

5 A. I believe that's what was testified in the  
6 investigation.

7 Q. This was after you had taken away Mr. Sanders' work  
8 truck for going back and forth to work, right?

9 A. Correct.

10 Q. Let's just look at an exhibit so we can be clear about  
11 the kind of tracking that exists of an employee like  
12 Mr. Sanders.

13 If you could pull up -- I'm having a hard time  
14 seeing the pages here.

15 (Mr. Kaster confers with technician)

16 I'm going to pull up a document from the  
17 investigative file, and as I understand it, this is a  
18 hi-rail document that shows us -- so it will be up here in  
19 just a moment.

20 THE COURT: I don't think we have an exhibit  
21 number, Mr. Kaster.

22 MR. JAMES KASTER: It's Exhibit 98. It's already  
23 in. This would be --

24 THE COURT: Thank you.

25 MR. JAMES KASTER: -- specific pages of that

1 exhibit. Thank you, Your Honor. It's 124 and 125 of  
2 Exhibit 98, and then I'll be going with the witness to page  
3 132.

4 BY MR. JAMES KASTER:

5 Q. Can you read this?

6 A. Mostly.

7 Q. Yeah. We can blow up a little section for you.

8 This is actually a document that tracks exactly  
9 when Mr. Sanders would have gotten on the tracks in the  
10 hi-rail vehicle that day, right?

11 A. This document shows a little bit more than that, but  
12 yes, it does show when he would have been, like, in hi-rail  
13 mode.

14 Q. When you say it "shows a little more than that," what do  
15 you mean, please?

16 A. There's an ignition column, so the ignition column is  
17 highlighted in blue. That would have been when he first  
18 turned the vehicle on.

19 Q. So that shows us that he turned the vehicle on, it looks  
20 like, or at least by what would be 9 a.m., right?

21 A. Correct.

22 Q. And when it says "True" in the ignition column, then  
23 that shows that the vehicle is on, correct?

24 A. Correct.

25 Q. And then when it goes from "False" to "True" in the

1 hi-rail mode, that's when it shows that it's actually in  
2 motion on the rails, right?

3 A. His HLCS is engaged.

4 Q. I'm sorry. What do you mean by that?

5 A. HLCS is the tracking, so yeah. So when he's on track,  
6 then that'll populate as "True."

7 Q. And then if we go to the last page, page 132.

8 MR. JAMES KASTER: Thank you, Karla.

9 BY MR. JAMES KASTER:

10 Q. That'll show you when he goes -- and we've highlighted  
11 this -- when the hi-rail mode goes from "True" to "False"  
12 that day is when he's getting off the rail.

13 A. Correct. He's no longer on the track, but the ignition  
14 is engaged.

15 Q. All right. And then it shows a period of time from  
16 18:23 -- I'm sorry, 13:23 -- that would be 1:23, right --

17 A. Correct.

18 Q. -- until 1:48 when the vehicle is engaged and in  
19 ignition, but he's no longer on the track, right?

20 A. Correct. So that would be him just driving the vehicle  
21 or it's on and idle.

22 Q. And do you recall him saying that he was coming from  
23 St. Croix coming back to Dayton's Bluff?

24 A. So I don't recall him saying that, but based on his  
25 track authorities, that's what that document said.

1 Q. And that time from when he left the St. Croix to  
2 Dayton's Bluff driving back on the road would certainly be  
3 work time.

4 A. Correct.

5 Q. So then it goes into "False" in that column where we  
6 have a little blue ink written around it and you can see  
7 that the vehicle is off, correct?

8 A. Correct.

9 Q. And that's at 1:48, correct?

10 A. Correct.

11 Q. And if Mr. Sanders hadn't taken lunch that day, he was  
12 entitled to take a lunch, right?

13 A. Correct.

14 Q. And you don't know what he did after that time, right?

15 A. What he did after?

16 Q. He got back at 1:48.

17 A. Right. Correct.

18 Q. I mean, his lunchtime would be work time, right?

19 A. I forget how the contract reads for lunch.

20 Q. He's entitled to take a lunch.

21 A. I believe so.

22 Q. As I understand it, the amount of time that you believe  
23 that he stole on the 19th was two and a half hours, right?

24 A. That sounds correct.

25 Q. And that would be the hour and a half in the morning

1 before you saw him the first time, right?

2 A. Yeah. So you're saying prior to 8:45.

3 Q. When was the first time that you saw him that day?

4 A. I saw his vehicle at 9:15.

5 Q. Okay. So what I'm saying is, prior to the time that you  
6 saw him, you're counting that as stolen time.

7 A. I had done it based on 8:45. So I was on property at  
8 8:45 and didn't see him and I left, so he could have shown  
9 up at 8:46, 8:47. I wouldn't have seen that. So when I  
10 presented the information at the investigation, the benefit  
11 of the doubt was 8:45 just because I physically didn't see  
12 him arrive on property.

13 Q. Was that when you left and went to the coffee shop?

14 A. Excuse me. 8:30, not 8:45.

15 Again, I think I testified earlier I don't  
16 remember which break I went to the coffee shop, so I don't  
17 know. And I don't recall what I was doing in the other  
18 30-minute or other 45-minute break.

19 Q. When were those known 30- and 45-minute breaks?

20 A. I believe I testified that I was on -- I looked for him  
21 at 8:00. He wasn't there. I left and I came back at 8:30,  
22 he still wasn't there, and when I came back at 9:15 he was  
23 there.

24 Q. Well, you were posting on Instagram exactly at 8:30,  
25 right?

1 A. That's when it sent and that's when it time stamped. It  
2 can time stamp and I can look it up and it still be 8:30.  
3 So I'm saying I was able to visibly see at 8:30 that he was  
4 not there.

5 Q. So back to my question. Are you suggesting that  
6 Mr. Sanders stole two and a half hours on the 19th?

7 A. Yes. That was what was in the investigation.

8 Q. Well, I'm asking you. Is that what you're saying?

9 A. I am a visual person, so it would have been from I  
10 believe -- I would have to write it out. I apologize for  
11 that, but when I did the math it was two and a half hours.

12 Q. Do you think theft is a serious accusation?

13 A. Yes.

14 Q. Do you think it can be career altering?

15 A. Yes.

16 Q. Does theft require taking something?

17 A. Physical?

18 Q. Taking something. Does theft require taking something?

19 MS. DONESKY: Objection. Calls for a legal  
20 conclusion.

21 THE COURT: Overruled.

22 A. So I'm answering?

23 Q. Please.

24 A. I believe so.

25 Q. On the 25th -- and by the way, you got clearance from

1 whom to do this again the next weekend?

2 A. There were conversations with Mr. Jones and I believe at  
3 that point we had talked to labor relations, so it would  
4 have been labor relations and Mr. Jones. And I don't recall  
5 anyone else having an input, but that's my recollection.

6 Q. And what did you tell the people at labor relations?

7 A. I had observed something suspicious. And I don't know  
8 the specifics, but I think there was something along the  
9 lines, like, if it was a pattern or it was just a one-off,  
10 and so that was what kind of led to the decision of the  
11 following weekend doing the same observance.

12 Q. When you said you observed something suspicious, what  
13 did you say was suspicious?

14 A. Just that he -- I'm going to just use 8:45 for reference  
15 on the 19th, because he came sometime between 8:45 and -- or  
16 sorry, excuse me -- 8:30 and 9:15. He wasn't there at 8:30  
17 and he was there at 9:15. When I say he was there, I mean  
18 his personal vehicle was in the parking lot. The work  
19 vehicle was being utilized. So his start time was 7:00. I  
20 didn't see him or his vehicle until 9:15, or theoretically  
21 8:30, and then I saw him leave property a little bit before  
22 2:00. And so that was suspicious, because his work hours  
23 were 7:00 to 3:00.

24 Q. Well, did you give that long explanation to the people  
25 at labor relations?

1 A. I would imagine so. Again, I don't recall the  
2 specifics, but there was a discrepancy from his working  
3 hours and what I had observed. I --

4 Q. Did you tell the people -- I'm sorry. I don't mean to  
5 cut you off.

6 A. No, I was just -- I'm done.

7 Q. Did you tell the people at labor relations that you  
8 spent some of the time in the morning at the coffee shop?

9 A. I -- I don't know if I was that specific, but again,  
10 like -- I mean, again, like I never -- I also never held  
11 those 45 minutes in the two and a half hours. When I said  
12 things weren't accounted for, the time that I was -- didn't  
13 see him physically arrive at work, like, I gave him the  
14 benefit of the doubt. So did I clarify exactly where I was?  
15 I don't know and I don't recall, but even when we went to  
16 investigation, like, it was acknowledged that I was not on  
17 site from 8:30 to 9:15.

18 Q. Okay. When you say you gave him the benefit of the  
19 doubt, did you tell people at labor relations: "I don't  
20 have any idea if he was working before I saw him and I don't  
21 know if he was working after I last saw him"?

22 A. I would have told them that this is what I observed and  
23 this is his scheduled time, and so I don't know where he  
24 was, or I wouldn't have known.

25 Q. Who did you speak to at labor relations? Do you recall?

1 A. I don't -- I don't recall specifically. I think that  
2 Zahn Reuther would have been our labor relations person. I  
3 believe it was him. I don't recall if there was any  
4 additional labor relations people. I recall working with  
5 him in some capacity.

6 Q. How many conversations did you have?

7 A. I don't recall.

8 Q. More than one?

9 A. I don't -- with labor relations specifically?

10 Q. Well, let's back up. How many conversations did you  
11 have with Mr. Jones in that time frame, from the 19th to the  
12 25th, about this subject?

13 A. Probably a handful. I know it's not exact, but maybe  
14 four or five. So I would imagine that there's more than one  
15 call with Zahn just as we're working through everything, but  
16 I don't have specifics.

17 Q. Was Mr. Jones directing your efforts on the 19th and the  
18 25th and the 26th?

19 A. He wasn't directing. It was not a directive from him.  
20 It was something that I wanted to deep dive and understand,  
21 but it was something that we had discussed.

22 Q. You used the same rental car the next weekend on the  
23 25th and 26th, right?

24 A. Yes.

25 THE COURT: Mr. Kaster, if this is a good time to

1 break for lunch. We've been going for just a little over  
2 two hours.

3 MR. JAMES KASTER: That would be great.

4 THE COURT: Okay. Here's what we'll do. We're  
5 going to shorten the lunch period up just a little bit today  
6 to account for the fact that we're starting a bit late and  
7 to keep an eye on the weather, so we will take 45 minutes.  
8 We will resume at ten minutes to the hour.

9 We'll recess.

10 MR. JAMES KASTER: Thank you, Your Honor.

11 (Lunch recess taken at 12:06)

12 \* \* \* \*

13 (12:50 p.m.)

14 IN OPEN COURT

15 THE COURT: Thank you, everyone. Please be  
16 seated.

17 Before we resume, let me just give everybody a  
18 sense of what we're going to do. Our chief judge has the  
19 authority to make such decisions and he has made the  
20 decision to close the courthouse at 3 o'clock today, so we  
21 are going to 3 o'clock and then we're going to end at that  
22 time and account for the weather.

23 So, just to put everyone's mind at ease if you're  
24 concerned about that and to give everybody a firm idea of  
25 the plan, that's what we'll be doing.

1                   Mr. Kaster? Is Ms. Hoppenrath here?

2                   MR. JAMES KASTER: Thank you. I think we lost our  
3 witness.

4                   (Discussion off the record)

5                   (Witness retrieved)

6                   THE COURT: Mr. Kaster?

7                   MR. JAMES KASTER: Thank you, Your Honor.

8 BY MR. JAMES KASTER:

9 Q. Ms. Hoppenrath, I think you have a fresh water there if  
10 you need it.

11 A. Perfect.

12 Q. Whenever you're ready.

13 A. Yeah. I'm ready.

14 Q. Okay. I'm going to circle back on just a couple of  
15 quick things. Let's go to Exhibit 98 at 137, please.

16                   This is actually -- if we can blow up the bottom  
17 under "changing time" or next to "changing time." This is a  
18 part of the PATS policy manual. Do you recognize this?

19 A. I recognize this.

20 Q. And in fact, there's a specific directive in the PATS  
21 policy manual about how you change your time, right?

22 A. That's what this states.

23 Q. And then if we go to 139, there's specific policies on  
24 changing time for an employee which tells you the steps to  
25 go through for changing your time, right?

1 A. Yes. And just for clarification, I don't recall my  
2 people using PATS. I think that was an earlier version of  
3 PARS, but I specifically was in the PARS realm, so just for  
4 clarification.

5 Q. Fair enough. In any case, were there specific  
6 directions like this for PARS on changing your time, do you  
7 recall?

8 A. I don't recall.

9 Q. In any case, there were steps an employee could take to  
10 go into the system and change his or her time, correct?

11 A. Correct.

12 Q. And that was something that was regularly used by  
13 employees at the time, right?

14 MS. DONESKY: Objection. Foundation.

15 THE COURT: Overruled.

16 A. I don't have any data to say that it was regular, so I  
17 couldn't give you a complete answer.

18 Q. All right. Let's leave that for now. Thank you.

19 Exhibit 85, if we can pull that up. We're just  
20 going to finish up one more question on the 19th.

21 This is Mr. Sanders' summary that he wrote  
22 March 19th. He says my day Sunday, March 19th. You had  
23 Thursday, he said Sunday. I think we've established that  
24 March 19th was actually a Saturday, right?

25 A. Yes.

1 Q. In any case, he sends this at 2:27 p.m., right?

2 A. That's what it stated, yes.

3 Q. And him doing this daily report was a part of his  
4 regular work, correct?

5 A. Correct.

6 Q. Let's go to the 25th. You use the same rental car from  
7 the 19th, correct?

8 A. Correct.

9 Q. The 25th is actually Good Friday. Do you recall that?

10 A. Yes.

11 Q. Mr. Sanders sends a summary email like the one we were  
12 just looking at. If we can pull up Exhibit 90.

13 He accepted this at 2:39 p.m. on the 25th, that  
14 Friday, right?

15 A. Correct.

16 Q. There was an original submission of -- on the time logs  
17 of eight hours and one hour of overtime, correct, for that  
18 day?

19 A. I thought that that was the following day. I thought it  
20 was eight and eight and a half, eight of the holiday pay and  
21 eight and a half for the overtime for the 25th, but I'd have  
22 to verify that with the document.

23 Q. We'll actually go through the records. He eventually  
24 changes his time to about four and a half hours for that  
25 day, right?

1 A. That sounds correct.

2 Q. And he does that on the 29th.

3 A. I believe so. That was a Tuesday morning.

4 Q. That was a Tuesday. I believe that's correct.

5 A. Yes.

6 Q. From the four and a half hours, you believe that he  
7 overbilled by an hour and 15 minutes, right?

8 A. I believe so. Yes.

9 Q. We can pull up that testimony if you need to have your  
10 recollection refreshed.

11 A. I recall seeing him at 7:00 and leaving at -- I don't --  
12 I know I've looked at it, but I forget exactly when I said  
13 that he had left. And I don't want to confuse my days, but  
14 I believe it was like 10:15ish. That's what I believe --

15 Q. All right. Let's pull up 103, page 45.

16 In the middle of that page, if you could blow up  
17 from what appears to be line 8 -- well maybe -- why don't we  
18 give the benefit of the whole question, which is on line 4.

19 So we're talking about the 25th. You're asked:

20 "What was his time? And all I'm asking -- he was paid for  
21 four and a half on that paycheck. What are you guys  
22 charging him with stealing?" And you answered: "From the  
23 four hours and 30 minutes, an hour and 15 minutes."

24 Do you recall that?

25 A. Yes.

1 Q. Now let's go to the 26th. That is the Saturday before  
2 Easter, right?

3 A. Correct.

4 Q. And as I understand it, the claim is that he stole three  
5 hours of time on the 26th, right?

6 A. Sorry. I am thinking about the math in my head. That  
7 sounds to be correct.

8 Q. All right. Why don't we go to the next page, page 46 of  
9 Exhibit 103, and blow up from line 9 to the bottom.

10 So look at that testimony and see if we are in  
11 fact talking about the 26th. If you look at line 23, I  
12 think that's helpful.

13 A. Yes, so the three hours for that day.

14 Q. So we're talking about two and a half hours on the 19th,  
15 right?

16 A. Correct.

17 Q. And an hour and 15 minutes, right?

18 A. Correct.

19 Q. And then three hours.

20 A. Correct.

21 Q. I'm going to -- this might get a little tedious, but  
22 we're going to walk through some of the time entries, okay?

23 A. Okay.

24 Q. If we can go to Exhibit 98. I believe it's 118 to 119.

25 Oh, I'm sorry. I have the wrong exhibit reference

1 there. It is 124 and 125, but let's start at 124. If we  
2 could go to 124.

3                   Actually, I have this page. Exhibit 14, page 124.

4                   MR. JAMES KASTER: This is my mistake, Your Honor.  
5 I'm going to go back to the first exhibit. I apologize.

6                   There we are. We're going to start at the 19th.  
7 We can talk about how this works. If we can go to page  
8 98 -- or Exhibit 98, page 118.

9                   So let's start with -- we're looking at March 19th  
10 in the system, right, the payroll -- this would be the PARS  
11 system, right?

12 A. Correct.

13 Q. And we can see according to this that there's an entry  
14 that's been entered for the 19th, right?

15 A. Correct.

16 Q. And if we look past -- into the next week, as of this  
17 point there's an entry for the 20th and 21st. The 22nd,  
18 23rd and 24th have little men standing up. What does that  
19 mean?

20 A. I don't recall what the men standing up means.

21 Q. Does it refresh your recollection that it means that  
22 Mr. Sanders or whomever this is is scheduled to work that  
23 day?

24 A. It sounds right.

25 Q. And if the little man is laying down, do you recall if

1           that's a scheduled rest day?

2       A. It would be a rest day.

3       Q. Okay. But in any case, that entry on the 19th  
4           indicates -- the way that's entered indicates that time has  
5           been entered for that day, correct?

6       A. Correct.

7       Q. And if we look at the time on this particular exhibit,  
8           we look in the right-hand corner, we can see that this is as  
9           of 2:59 p.m. on the 21st, correct?

10      A. Correct.

11      Q. And then if we look at page 119 of this exhibit, that  
12           appears to be what is entered for the 19th, correct?

13      A. Correct.

14      Q. By the way, in this PARS system, was a supervisor  
15           entitled to go in and make an entry or modify an entry for  
16           an employee?

17      A. I don't know if I was able to actually edit. I never  
18           did, but I did have viewing capabilities.

19      Q. You don't know whether or not someone other than the  
20           employee could make an entry.

21      A. I don't know.

22      Q. In any case, this shows us the entry is in for that day  
23           as of -- and we've gone to the right-hand corner again on  
24           the bottom of the exhibit. That's again at 2:58 p.m. on the  
25           21st. You can see the time is entered for the 19th,

1           correct?

2       A.    Correct.

3       Q.    All right. Let's go to the next page. This would be  
4           page 121. It's marked as Exhibit 4, just the top of the  
5           page, "Timely Reporting." Do you recall what this is?

6       A.    Yes. This would be a printout for our timely reporting  
7           metric. This was one of the -- I don't think dropdown's the  
8           right word, but you could go in and look at individual  
9           gangs, so this would have been his gang, which was just a  
10          single person.

11       Q.    So this is Mr. Sanders' entries, right, shows you is a  
12          summary of his entries?

13       A.    Correct.

14       Q.    All right. Let's go to Exhibit 103 and start out at  
15          124.

16                   And now we're looking at the 25th, right?

17       A.    Correct.

18       Q.    And we see, according to this, anyway, there's an entry  
19          for the 25th that's been submitted, right?

20       A.    Correct.

21       Q.    And we can see that that is as of -- why don't we look  
22          at the time. It appears that that's as of 3:25 at  
23          3:41 p.m., right?

24       A.    Correct.

25       Q.    And then if we look at the next page, it's Trial Exhibit

1 125, if we can blow up the top of the entry.

2 Now, there's an entry for holiday time, which is I  
3 think the overtime, eight hours and 30 minutes. That's not  
4 the issue, right?

5 A. I would have to double-check with the investigation, but  
6 I'm pretty sure it was, like, the straight eight was their  
7 holiday pay and then anything they worked was the overtime,  
8 so he would have entered the overtime hours.

9 Q. I see. So you're saying the eight hours is not the  
10 issue.

11 A. Correct.

12 Q. Because he was entitled to holiday pay.

13 A. Correct.

14 Q. So it's the eight hours and 30 minutes that is entered  
15 as of --

16 A. Correct.

17 Q. Just so we're clear, this is for what day?

18 A. The 25th. It's at the top in the red header.

19 Q. And we're looking at this as of?

20 A. I can't see the exhibit --

21 Q. Okay. The bottom right-hand corner?

22 A. -- but I believe it was that Saturday.

23 Q. We're going to pull up this. You're looking at that  
24 again as of 3:40 p.m. on the 25th, right?

25 A. Correct.

1 Q. Now I'm going to go to page 127, because this has the  
2 26th and it has the little guy standing up for the 26th. Do  
3 you see that?

4 A. Yes.

5 Q. And this is as of -- let's look at the date. 6:59 a.m.?

6 A. So to my recollection, for whatever reason when I was  
7 screen-printing these, it didn't grab that date. It was not  
8 intentional. It was something that was brought up in the  
9 investigation and it was brought up -- or like I had noticed  
10 it when I was preparing for the investigation, but I -- as  
11 of that Tuesday morning on the 29th at 6:59, I didn't see  
12 any time that was entered. So I recall looking at this  
13 Tuesday morning, but again, like, it wasn't intentional.  
14 There was no -- I didn't mean to do it. So ...

15 Q. Well, that's my question. This is as of the 29th,  
16 6:59 a.m.

17 A. Correct, yes, on Tuesday the 29th.

18 Q. On Tuesday the 29th.

19 A. Yes.

20 Q. He has not entered time for the 26th, right?

21 A. Correct.

22 Q. So let's go to page 143, and we may have to back up to  
23 142. Well, let's start at 142, Exhibit 142.

24 Because we can see at this point in time there is  
25 time entered for the 26th, right?

1 A. Correct.

2 Q. And if we show the time, this is as of 7:26 a.m.?

3 A. Correct.

4 Q. Mr. Sanders actually comes in on the 29th for the first  
5 time after the 26th, right?

6 A. Correct.

7 Q. And he's in in the morning at the station house on the  
8 computer, right?

9 A. Correct.

10 MS. DONESKY: Objection. Foundation.

11 BY MR. JAMES KASTER:

12 Q. Did you hear this?

13 A. Did I hear what?

14 Q. That he was in the station house when Mr. Jones walked  
15 in.

16 A. Excuse me. No. I wasn't -- I'm sorry. I was not there  
17 physically on the 29th, so based on this, like, he was on  
18 his computer entering time at some point, but I was not  
19 physically there.

20 Q. So if we go to the next page, 143, this appears to  
21 be -- and we can show the time -- it appears to be an entry  
22 for that day, the 26th, and it's at 7:25 a.m., correct?

23 A. Correct.

24 Q. So time is entered, according to this record, for the  
25 26th on the morning of the 29th.

1 A. Correct.

2 Q. You are required to review payroll every two weeks and  
3 approve it before it gets paid, right?

4 A. I believe that was. If it didn't get approved, they  
5 would still get paid, but it was an expectation to approve  
6 time.

7 Q. To go through that system we just looked at it and  
8 approve it.

9 A. I don't think it was that system. I wasn't physically  
10 going into PARS. I could if I wanted to, but I think the  
11 time approvals came through a different mean.

12 Q. All right. Let's pull up Exhibit 103, page 50. Go to  
13 the top of the page.

14 You were asked the same question in the  
15 investigatory hearing that I just asked you.

16 "Mr. Mozinski: I do have a question. Um, do you  
17 review the time? You're required to review the time roll  
18 every two weeks, correct?"

19 And your answer was: "Correct."

20 A. Yes.

21 Q. Would it be fair to say that you had a better  
22 recollection of these events at the time of the  
23 investigatory hearing than today?

24 A. Sorry. Can you repeat the question?

25 Q. Did you have a better recollection of these events at

1           the time of the investigatory hearing than today?

2       A. Yes, but I -- never mind.

3       Q. You admit, as we've discussed at some length, that  
4           employees could go back and change their time before the end  
5           of the payroll half.

6       A. Correct.

7       Q. Were you aware of the fact that Mr. Sanders was entitled  
8           to notice of any problem with his payroll or time entries?

9           Are you aware of that?

10      A. I'm not a hundred percent sure what you're referring to.

11      Q. All right. Did you ever hear that an employee like  
12           Mr. Sanders was entitled to notice of any problem with his  
13           time entries or her time entries before someone suggested  
14           that there was some wrongdoing involved?

15      A. I don't recall that.

16      Q. You had many conversations with different people as you  
17           were going through this process in both labor relations,  
18           Mr. Jones, and others, right?

19      A. Yes.

20      Q. Did anyone tell you that Mr. Sanders was entitled to  
21           notice of any problem with his time entries?

22      A. I don't recall anyone telling me that.

23      Q. Let me ask you if you have a recollection of this,  
24           Exhibit 98 at 145. Now, this is actually before your time,  
25           at least as of the date on this newsletter, but I'm

1                   wondering if you ever saw something like this.

2                   Did you ever -- let me ask this question before we  
3 go into the newsletter:

4                   Do you remember ever hearing about a cut letter?

5                   A. Yes.

6                   Q. What was a cut letter?

7                   A. I don't recall the specifics, it's been awhile, so I --  
8 I know it was something -- or I think that it was something  
9 that came from, like, the Manpower timekeeping office. I  
10 don't recall exactly how they came about or what would  
11 trigger a cut letter or what the process was. I'm  
12 unfamiliar with how -- how or why something would be flagged  
13 and why a cut letter would be sent.

14                  Q. Are you familiar with the fact that if you or a  
15 supervisor like you contended that an employee had not in  
16 fact worked a given day or a given amount of time on a given  
17 day, that a cut letter would routinely be sent?

18                  A. So I'm not familiar. Again, I don't know -- I don't  
19 know how those cut letters are generated. It wasn't a  
20 well-known process to myself.

21                  Q. In the conversations that you had from 3 o'clock or  
22 about 3 o'clock on the 19th until the investigatory hearing,  
23 did anyone suggest that maybe Mr. Sanders should receive a  
24 cut letter?

25                  A. I don't recall any conversation of that nature.

1 Q. Or that maybe Mr. Sanders was entitled to notice.

2 A. I don't recall anyone saying that.

3 Q. Or that maybe Mr. Sanders was entitled to someone having  
4 a conversation with him?

5 A. I don't recall anyone saying that.

6 Q. By the way, do you recall knowing about the red letter  
7 "A"? In other words, if a supervisor didn't approve the  
8 time in the system, you could superimpose a red letter "A"  
9 denying the time?

10 A. It sounds familiar or plausible, but I never utilized  
11 that.

12 Q. So on the 29th, Mr. Sanders attempts to modify his  
13 entries for the 25th and 26th, right?

14 MS. DONESKY: Objection. Foundation.

15 THE COURT: Sustained.

16 BY MR. JAMES KASTER:

17 Q. Well, did you become aware on the 29th that Mr. Sanders  
18 had attempted to modify his entries for the 25th and 26th?

19 A. Yes.

20 Q. In fact, you testified about that in the investigatory  
21 hearing, right? If we go to Exhibit 103 at page 49. And  
22 you were asked in the middle of the page -- let's start at  
23 line 10:

24 You're asked why you didn't have a conversation  
25 with Mr. Sanders, and at line 12 you say:

1                   "Well, we could have. We decided to restrict his  
2 access and it would come up in the investigation, and then  
3 we would use this as a chance to gather all the facts of the  
4 case."

5 A. Is this a conversation referring about modifying his  
6 time specifically?

7 Q. It's a conversation about cutting him off.

8 A. Cutting him off?

9 Q. From access to his computer so he couldn't make any more  
10 modifications.

11 A. Yeah. So like I testified, we could have. We decided  
12 to restrict his access. That was from the conversations  
13 that we had had with labor relations. So that was not a  
14 decision I solely made on my own. We sought counsel from  
15 our LR department.

16 Q. All right. So this is happening in realtime on the  
17 morning of the 29th, right?

18 A. Which part?

19 Q. The conversations and the decision to restrict his  
20 access.

21 A. I don't recall if that was the morning of the 29th or if  
22 that had been conversation either the -- like the Monday  
23 before. I don't know the specific timeframe of when we  
24 talked about restricting access. Yeah.

25 Q. Who's "we"?

1 A. It would have been me and Mr. Jones and the labor  
2 relations team. I don't know -- I don't recall really  
3 anyone else extremely involved in it. There might have been  
4 conversations with Mr. Jones's boss, just like as a courtesy  
5 to loop him in, but I don't recall -- I recall labor  
6 relations and Mr. Jones specifically talking about --  
7 talking about this particular matter.

8 Q. Talking about the fact that Mr. Sanders was accessing  
9 his time for the weekend of the 25th and 26th and a decision  
10 was made to cut him off.

11 A. I would say the decision about if -- because -- because  
12 in the investigation notice we removed him from service, so  
13 it was a conversation about what that was, like, going to  
14 look like when he was actually removed from service.

15 Q. What prompted the decision to restrict his access was  
16 noticing that he had changed his time.

17 A. No.

18 Q. No?

19 A. I don't believe so. I don't recall that being it.

20 Q. I want to go back to -- let's go to Exhibits 52 and 53,  
21 please. It's actually 91 and 92.

22 MR. JAMES KASTER: I apologize, Your Honor.

23 Q. Let's go to Exhibits 91 and 92.

24 So 91 is the notice of investigation for the 19th,  
25 correct?

1 A. Correct.

2 Q. And this was actually prepared, it looks like, by  
3 Mr. Jones on the 28th.

4 A. I know it was Mr. Jones's name, but I don't know if he's  
5 the one who physically prepared this.

6 Q. Who do you think physically prepared this?

7 A. I think it would have been one of the admins or the  
8 SESes. We all -- I mean, there's input that goes into it,  
9 but typically the SES would.

10 Q. Input from who?

11 A. What do you mean? Input like -- so I would say this is  
12 what I -- this is what I need an investigation for, and then  
13 from there it would get entered into our -- I can't even  
14 think of the name, but the system that would generate the  
15 notices. And then typically would look at a draft and then  
16 make adjustments as needed until it was what we wanted it to  
17 reflect.

18 Q. There were two notices. We'll get to 93 in a moment,  
19 but this 92 is for the 19th, correct?

20 A. Correct.

21 Q. And again, according to the date, it was prepared on the  
22 28th, correct?

23 A. Correct.

24 Q. And that would be the Monday before the Tuesday that we  
25 were just talking about, right?

1 A. Yes.

2 Q. Okay. So let's take a look at the next notice. This  
3 would be Exhibit 93.

4 MR. JAMES KASTER: I'm sorry. Did I say that  
5 wrong?

6 MS. PATHMANN: 92.

7 MR. JAMES KASTER: 92. Thank you, Karla.

8 BY MR. JAMES KASTER:

9 Q. And this is for the 25th, beginning on the 25th, right?

10 A. Correct.

11 Q. And there was some dispute in the investigatory hearing  
12 about whether the 26th was something that was noticed and  
13 part of this notice of investigation. Do you recall that?

14 A. I recall a little bit of that.

15 Q. Yeah. Was it your view that the 26th was supposed to be  
16 included in this notice of investigation?

17 A. Yes.

18 Q. This was also prepared on the 28th of March. Do you see  
19 that?

20 A. I would like to clarify that this was dated on the 28th.  
21 As someone who's made notices before, it can be a multi-day  
22 process. So just for clarification, that the final date for  
23 these was the 28th. I just want to note that, that yes,  
24 this is dated the 28th, but it could have been -- this one  
25 wouldn't have been because of the weekend, but for the

1 previous one.

2 Q. All right. But one thing that the record is clear about  
3 is that Mr. Sanders, or whomever, had not entered any time  
4 for the 26th as of this date, right?

5 A. Correct.

6 Q. And now let's go back to Exhibit 98, Trial Exhibit  
7 121 -- or page 121. That is Exhibit 4 in the investigatory  
8 hearing. We looked at this before.

9 As you had testified, this was a reflection of  
10 Mr. Sanders' entries in his time, or at least according to  
11 the record that's what it's supposed to be, right?

12 A. Can you say that one more time?

13 Q. Yes. As I understood your testimony earlier, this was a  
14 reflection of Mr. Sanders' time entries, this document.

15 A. It contained information, so again, it has, like, the  
16 latest reporting, so there is information about when they  
17 report time on this document.

18 Q. Okay. So let's take a look at this at the bottom of the  
19 page, if blow up the whole bottom, because this is an  
20 entry -- current viewing time is March 31st of 2016, right?

21 A. Is that at the bottom of the page?

22 Q. I'm sorry. The very last sentence at the bottom of the  
23 page --

24 A. Oh, yes.

25 Q. -- tells us that this is being looked at on March 31st,

1       2016. Do you see that?

2       A. Correct.

3       Q. And according to this, is there an entry for the 25th?

4       A. I don't see an entry for the 25th.

5       Q. All throughout this time period you are having  
6           conversations with Mr. Jones and labor relations, right?

7       A. Correct.

8       Q. About Mr. Sanders.

9       A. Correct.

10      Q. And this is before payroll is run for that time period,  
11           you're having these conversations before payroll has been  
12           run.

13      A. Correct.

14      Q. Let's take a look at Exhibit 173. And I'll open this up  
15           to the first page of the document and let's just hold this.

16           This is a run of payroll for Mr. Sanders. So I  
17           want to ask this question:

18           Was there a conversation with Mr. Jones and labor  
19           relations about whether or not to pay Mr. Sanders for the  
20           disputed time before payroll was run?

21      A. I did not have that conversation with labor relations,  
22           so I was not privy to anything about actually paying him. I  
23           don't recall anything. I've never seen -- I don't recall  
24           seeing a document that looks like this.

25      Q. Did someone consult with you about whether or not he

1 should be paid?

2 A. I don't remember any.

3 Q. Do you think he should have been paid for the time that  
4 you disputed?

5 A. I would have deflected to labor relations for that kind  
6 of question. That's something so far out of the scope of my  
7 job that I don't think it's fair for me to have an opinion.

8 Q. At the time payroll was cut, you had made whatever  
9 observations you were going to make about the 19th, the 25th  
10 and the 26th, right?

11 A. Correct.

12 Q. And you had communicated your concerns and your dispute  
13 about his time entries to Mr. Jones and labor relations,  
14 right?

15 A. Correct.

16 Q. By the time payroll is cut.

17 A. Correct.

18 Q. So let's look at page 9, trial exhibit page 9, of  
19 Exhibit 173.

20 Because we can see, I think, if we go to the  
21 bottom of the page --

22 MR. JAMES KASTER: Go to line 291, please, Karla.

23 Q. We can see that someone decided to pay Mr. Sanders for  
24 the 19th, right?

25 A. Apparently. I don't know what this document is and I've

1 never seen it. So if that's what you're saying it is, then  
2 yes, but I've never seen -- I don't remember seeing anything  
3 like this or having access to something about what he was  
4 physically paid.

5 Q. Did you have a conversation with Mr. Jones or labor  
6 relations, anyone, about the fact that you couldn't possibly  
7 have payroll theft if Mr. Sanders wasn't paid?

8 A. Can you say that question again?

9 Q. Sure. Did someone decide to pay him specifically?

10 A. I don't know how the process works for this, so I don't  
11 know if this is -- I don't know what the process is. I  
12 don't know if it was someone or the system that paid him.  
13 That was beyond the scope of my job.

14 Q. All these conversations are being had with labor  
15 relations and Mr. Jones before Mr. Sanders is actually paid,  
16 right?

17 A. Yes.

18 Q. So let's take a look at the next page, page 10.

19 Because if we look at the 25th, it looks like  
20 Mr. Sanders is paid for the modified entry, four hours and  
21 30 minutes, right?

22 A. That's what this document appears to show.

23 Q. Then he's paid for eight hours on the 26th, right?

24 A. Again, that's what this document appears to show.

25 Q. In your next performance appraisal, you were actually

1 commended for your part in Mr. Sanders' termination.

2 Do you recall that?

3 A. I believe it was -- there was a comment about -- excuse  
4 me. Let me start over.

5 There's a comment in my performance review about  
6 holding Mr. Sanders accountable.

7 Q. You were personally commended for your courageous  
8 leadership with holding Mr. Sanders accountable --

9 MS. DONESKY: Objection. Relevance, hearsay.

10 Q. -- right?

11 THE COURT: Overruled.

12 A. Can you repeat the question?

13 Q. You were personally commended for your courageous  
14 leadership in holding Mr. Sanders accountable, right?

15 A. I believe that's what the review says.

16 MR. JAMES KASTER: That's all the questions I have  
17 for the witness. Thank you.

18 THE COURT: Ms. Donesky?

19 MS. DONESKY: Thank you.

20 THE COURT: Mr. Kaster, I think you left your  
21 water bottle there.

22 MR. JAMES KASTER: I'm sorry.

23 THE COURT: We just don't want them getting mixed  
24 up.

25 MR. JAMES KASTER: Oh, fine. Thanks. I

1 appreciate that, Your Honor. Thank you.

2 **DIRECT EXAMINATION**

3 BY MS. DONESKY:

4 Q. Good afternoon, Ms. Hoppenrath.

5 A. Hello.

6 Q. We spent the morning discussing various exhibits,  
7 portions of a record that was created back in 2016 when you  
8 were a witness at these investigative hearings. What I  
9 would like to do for the benefit of the jury is to walk you  
10 through each of the days of your observations and then your  
11 testimony at the hearings with the exhibits consecutively  
12 and we'll go through those, okay?

13 A. Okay.

14 Q. So let's begin with what led you, Ms. Hoppenrath, to  
15 decide to observe Mr. Sanders at work on March 19th, 2016?

16 A. So at some point a conversation was had with Mr. Sanders  
17 and myself prior to that afternoon. My interpretation was  
18 that he needed to leave by 3:00, not necessarily early. And  
19 that's important, because there's so many things that go on  
20 during the day that if I need to know he needs to leave by  
21 3:00, I can still contact him if needed or if something  
22 comes up, like he's an available to person to help run the  
23 territory. And he was someone who typically did work past  
24 3 p.m., so it was like I need to make a conscious effort to  
25 make sure that he can get out of here on time and support

1 his need to take care of whatever it was that day.

2 So, I was under the impression that he was going  
3 to stay till 3:00. When I noticed that he had left early,  
4 it just was something that didn't sit right with me. Again,  
5 it wasn't a lot of time, but typically, like, the guys would  
6 leave at 3 o'clock on the button. You'd see kinda everyone  
7 filter out of the section house at that point in time.

8 And so it was just something that I wanted to look  
9 into more and with the weekend coming up it provided an  
10 opportunity to do so.

11 Q. And at that point and based on that personal observation  
12 that you just described, what did you do next?

13 A. To the best of my recollection, at some point I had had  
14 the conversation with Mr. Jones explaining, like, what I had  
15 saw -- or what I had seen, and then at that point, like, he  
16 said that it would be okay if I looked -- or if I observed  
17 him over the weekend.

18 And I don't remember exactly how it came to  
19 fruition, but there was just -- not the observation, but I  
20 believe Mr. Jones had said, "Well, you know, my Suburban is  
21 in the shop and I have a rental," so that just kind of made  
22 sense and it fell into place a little bit.

23 Q. And explain why in the situation in terms of your  
24 observation why using a non-BNSF or your own personal  
25 vehicle made sense to you to conduct the observation.

1       A. Again, like, I just wanted to observe Mr. Sanders in a  
2 manner where there wasn't a perception that he was being  
3 watched, and being in a -- in my BNSF vehicle would -- he  
4 would have known I was out there. You kind of understand  
5 whose work trucks belong to what people.

6                   And again, I mentioned it earlier, but it was a  
7 work-related -- it was a work-related function and I just  
8 wouldn't have taken my personal car for something like that,  
9 and so that -- so that's why I was not in my personal  
10 vehicle either.

11          Q. Was there a sense that if you didn't have a vehicle,  
12 that the use of an unmarked vehicle would enable you to  
13 observe him without modifying his conduct if he knew you  
14 were looking on?

15          A. Correct. It was essentially to see, like, what would he  
16 do if he believed that no one was watching.

17          Q. And do track inspectors like Mr. Sanders during that  
18 time period, are they employees who generally work on their  
19 own?

20          A. Generally. I mean, the process of inspecting more often  
21 than not is done on an individual basis.

22          Q. Without supervision?

23          A. Correct.

24          Q. So by being in an unmarked car, you were creating that  
25 similar type of environment?

1 A. Correct.

2 Q. So let's move to Saturday of -- March 19th. Was there a  
3 reason why you observed him on a Saturday?

4 A. Yeah. So one of the advantages of being in on a  
5 Saturday was I -- I didn't have another work group that was  
6 scheduled to work that Saturday, so it was easier to manage  
7 exactly what -- or it was easier to observe without having  
8 to deal with phone calls, the transportation team, any other  
9 things that would come up. I don't recall if I was on call  
10 that weekend, but there's just less distraction.

11 Q. You mentioned two reasons. What was the other reason?

12 A. I didn't have work groups, and then it was just less --  
13 sorry. Less work groups and then less, just other  
14 day-to-day functions that I didn't have to manage.

15 Q. So walk through what you personally observed regarding  
16 Mr. Sanders on that Saturday.

17 A. So I -- I know I've already testified a little bit about  
18 this, but I drove down to Dayton's Bluff and I arrived the  
19 first time around 8:00, didn't see anyone.

20 Q. Let me stop you there, because you go at 8:00. No  
21 activity, you're saying?

22 A. Yeah. I guess when I say I didn't see anyone, I didn't  
23 see Mr. Sanders' personal vehicle nor did I see the hi-rail  
24 vehicle had been moved.

25 Q. And what are his scheduled hours?

1 A. 7 a.m. to 3 p.m.

2 Q. So you arrived at 8:00 and don't see anything.

3 A. Correct.

4 Q. And the 7-to-3 hours, are those part of the union  
5 position as to what those hours are defined to be?

6 A. So his position was bid as 7 to 3.

7 Q. Carry on. Sorry. I just wanted to clarify that.

8 A. Yeah. And then again, I had left the property and I  
9 came back around 8:30 and still didn't see his personal  
10 vehicle, and then I left again, and then at 9:15 he had come  
11 back -- or excuse me -- I had come back at 9:15 and his  
12 personal vehicle was in the lot and then the hi-rail vehicle  
13 was getting ready to be used.

14 Q. And what time was that again?

15 A. It was roughly 9:30 was when I observed it. Or let me  
16 rephrase that. Sorry. I think I misspoke.

17 I remember seeing his vehicle at 9:15, and then I  
18 looked to see if there was track and time and if he would  
19 have been inspecting at that point.

20 Q. Okay. So track and time, can you explain for the jury  
21 what that means.

22 A. Yeah. So track and time is a form of protection. So  
23 we're super concerned about safety, and if we're out  
24 inspecting track, we want to make sure that we have the  
25 correct authority to be on the track.

1                   So, track and time is something that we work with  
2 with the dispatcher, and once the dispatcher grants a  
3 segment of track, it will essentially put up red signals  
4 around the location that you have so trains don't enter into  
5 your workspace. So it's a safety measure. It's a form of  
6 authority to be on the track. And so it's something that  
7 the track inspectors will get when they first hi-rail. So  
8 if you're hi-railing on my territory specifically, track and  
9 time was the most common way to protect yourself.

10 Q. And it sounds like there's recordings of times as to  
11 when that hi-rail vehicle gets into operation?

12 A. Yeah. So it's in, like, the TMDS system and essentially  
13 you can see where their track and time is. I can see a  
14 visual representation of where my people are. Like on a  
15 normal day when there's several work groups out, you can see  
16 where the authority is. So in this instance it was only  
17 Mr. Sanders, that I recall, being out there. But then you  
18 can also go in retroactively and get essentially like a  
19 printout of all of their authorities for that day.

20 Q. And was a hi-rail vehicle the method or the main method  
21 in which Mr. Sanders conducted his inspections?

22 A. It was the primary form of inspection. You can cover a  
23 lot of territory relatively quickly in a vehicle. There  
24 were other different frequencies where you would have a  
25 walking inspection and things of that nature, but for the

1 primary function of a track inspector it was typically the  
2 hi-rail.

3 Q. Do you recall what track and time authority was obtained  
4 on that morning?

5 A. I would have to look to verify, but I want to say it was  
6 around 9:20.

7 Q. And we'll look at those records shortly.

8 So after that, once you see the track time  
9 authority, did you determine he was going to start  
10 working --

11 A. Yeah. So I -- I mean, he was there, he was getting  
12 time, he was moving along efficiently. I don't recall him  
13 having any problems with the dispatcher getting track and  
14 time that day, so he was essentially performing his job  
15 functions.

16 Q. And so what were your next observations related to  
17 Mr. Sanders on that day?

18 A. So I noticed that -- again, I have my laptop, so I'm  
19 able to see this remotely -- that he ended up in St. Croix,  
20 which is 25 minutes, give or take. I forget the exact  
21 distance, but it's about 20, 25 minutes away from Dayton's  
22 Bluff yard or his reporting location.

23 And then I believe he gave up -- when we say "gave  
24 up" his authority, it means they're off the track, they're  
25 in the clear, the dispatcher can now safely run trains. So

1       he gave up his time I want to say around 1:15, and then I  
2       recall him coming back to the shack I want to say around  
3       1:50, 1:55. I think in the investigation I specifically  
4       said 1:53.

5       Q. So when you that the track authority was given up  
6       roughly around 1:15, what did you do then as a result when  
7       you -- you said you had a laptop that was -- were you not at  
8       Dayton's Bluff at the time when you saw the --

9       A. I don't --

10      Q. -- track authority?

11      A. -- recall exactly where he was when he gave track and  
12       time up, but it was a pretty standard run. He started at  
13       Dayton's Bluff, you go towards Northtown and you go back out  
14       towards St. Croix. So I was able to, like, visually be --  
15       or be in a position where I could visually see the depot.

16                  And just for clarification, Dayton's Bluff, the  
17       shack, the depot, they're all referring to our reporting  
18       location, so if I interchange those, I apologize. But I  
19       just was curious to see when he got back what would he do,  
20       and then I observed him leaving and I believe it was a  
21       little bit before 2:00.

22      Q. And he was leaving in which vehicle?

23      A. His personal vehicle.

24      Q. Did you see him at work at any other time after that  
25       1:53 p.m. time?

1 A. No.

2 Q. So after observing him on that day, what did you do  
3 next?

4 A. After observing him that day, waited for time roll, what  
5 would it look like in PARS, and then on Monday -- I think it  
6 would have been Monday. I don't recall having conversations  
7 over the weekend. I might have. There would have been a  
8 time where then Mr. Jones and I have further conversations  
9 about our next steps.

10 Q. Based on your observations of that day and knowing his  
11 scheduled time was 7 to 3, based on the times that you  
12 observed him visually and based on the track activity that  
13 you had looked at at that time, did you notice then a  
14 discrepancy -- or even though you didn't know his hours, did  
15 you notice that he didn't work visually, your own  
16 observation, from 7 to 3?

17 A. Correct. So like I was saying earlier, like I was not  
18 on property from 8:45 to -- I'm so sorry to keep confusing  
19 these, but 8:30 to 9:15 I wasn't on site. I acknowledged  
20 that. So at best in my personal belief there was an  
21 unexplained hour and 45 minutes in the morning and then  
22 another hour in the afternoon, so from 7 to 8:45 and then  
23 again from 2 to 3, roughly. So that was a discrepancy that  
24 we needed a further deep dive.

25 Q. So you mentioned you spoke with Mr. Jones regarding

1           that?

2       A.    Correct.

3       Q.    And then what, if anything, did Mr. Jones suggest that  
4           you do?

5       A.    I don't remember, like, the details of the conversation,  
6           but there was conversation about how the following weekend,  
7           it was going to be a holiday weekend. I do -- I was on call  
8           that weekend, so I essentially didn't have any plans. And  
9           there was just conversation about if it was a one-time thing  
10          or if it was a pattern, so the decision was made between  
11          myself and Mr. Jones and labor relations that I would  
12          essentially perform the same observations the following  
13          weekend.

14       Q.    So that decision to conduct further observations the  
15          following weekend was made in conjunction with labor  
16          relations.

17       A.    Correct.

18       Q.    So let's talk about March 25th then. Why wait a week?  
19          That would be one question that I'd have for you for  
20          March 25.

21       A.    I'm sorry. Can you repeat the question?

22       Q.    Sure. So it's March 19th and you're speaking at the  
23          beginning of the week. Explain for the jury's benefit why  
24          the decision was made to observe him the following weekend  
25          rather than, you know, a weekday.

1 A. Right. So part of it was just like the amount of work  
2 and the amount of management that was going to go through in  
3 a day, not -- like having a general outline of the plan,  
4 kind of unsure where the day necessarily would unfold.  
5 Again, it was just a way to have, like, the attention on one  
6 individual and that was the primary reason. And then again,  
7 like, on the weekends there's just significantly less  
8 roadmaster presence on the territory.

9 Q. Now, March 25th of that week was a Friday.

10 A. Correct.

11 Q. Was there anything of note, though, regarding that  
12 Friday?

13 A. Yeah, it was Good Friday, which is a BNSF holiday.

14 Q. And would that be similar to a day in which there'd be  
15 less individuals around and less roadmasters?

16 A. Yes. It would have essentially functioned as like a  
17 weekend day.

18 Q. So that was the next day that you observed him.

19 A. Correct.

20 Q. Okay. So let's talk about Friday March 25. Explain and  
21 walk through the personal observations you made on that day.

22 A. I don't recall specifically what time I got to Dayton's  
23 Bluff, but I do recall seeing him right around 7 a.m.

24 Again, I saw his personal vehicle. He came in and  
25 he grabbed the work truck and then he proceeded with his

1 normal functions.

2 And then I -- I think -- I recall him having a  
3 pretty smooth day across the territory. So when I say that,  
4 he just -- not a lot of train traffic that would disrupt the  
5 hi-rail inspection.

6 And then I know it's in the investigation, but I  
7 recall him leaving roughly around 10:13. I think that's the  
8 exact time. So what I just remember is him coming back,  
9 driving back, dropping off that work truck and pretty  
10 quickly turning around and leaving in his personal vehicle.  
11 So there was a not a significant amount of time between when  
12 he returned to Dayton's Bluff or when I saw him leave the  
13 property for the day.

14 Q. So on that day you personally observed him at the  
15 beginning of the morning at 7 a.m.?

16 A. Correct.

17 Q. And then personally observed him depart around 10:13  
18 after returning the company truck. Did the hi-rail get  
19 turned off?

20 A. Yeah. That would be in all the exhibits when it was  
21 exactly turned off.

22 Q. So the hours you would have observed him coming and  
23 going for that day roughly were?

24 A. Three hours and 15 minutes.

25 Q. And are those hours obviously not the 7 to 3 that he's

1 scheduled to do?

2 A. Correct.

3 Q. So how about the March 26? What did you observe on that  
4 day?

5 A. So March 26 was a little bit of an anomaly. Again, I  
6 was on call, so I know by the time I had made it down in  
7 that general area, looking at track and time, he had gotten  
8 track and time before 7 a.m., at 6:47 I think was the exact  
9 time.

10 And I had to go directly to a location called  
11 Oakland, which is maybe a three- or four-minute drive from  
12 the shack. They needed an engineering officer at the scene.  
13 And by the time I was able to complete my duties at Oakland,  
14 it was a little bit before 11:00, so I went back to the  
15 shack and I didn't see Mr. Sanders' vehicle.

16 Q. Okay. So on that day, the beginning of the day, you  
17 weren't personally there at Dayton's Bluff.

18 A. Correct, and I was not personally there to see him  
19 leave.

20 Q. But you used -- reviewed the track time authority as you  
21 had done, the prior two observations, around 6:47.

22 A. Yes.

23 Q. And then when you returned, his personal vehicle was  
24 gone.

25 A. Correct.

1 Q. Did you observe any other activities, work activities,  
2 by Mr. Sanders after that time, after you got back?

3 A. I didn't see him on property.

4 Q. After your observations, then, of those two additional  
5 days, 25th, 26th, what then happened next?

6 A. I don't recall conversations over the weekend. I know I  
7 was periodically seeing if the time would have been entered  
8 for the 26th.

9 And on Monday -- again, I don't recall specifics,  
10 but that was when we were doing the final preparation of the  
11 investigation notices. They were dated the 28th. So there  
12 was conversation about exactly, like, what I had witnessed,  
13 things that I had pulled from PARS, and just kind of this is  
14 what I have, an investigation's probably necessary, and then  
15 working with Mr. Jones and labor relations to really hone  
16 out the next steps.

17 Q. So in the course of this process of putting the notices  
18 together you were working with labor relations?

19 A. Correct.

20 Q. And this notice that you're referring to, is that  
21 something that's a requirement under the CBA?

22 A. Yes. So there are certain timelines that we have to  
23 meet. I don't recall exactly, it's been awhile, but it was  
24 like seven to ten days, somewhere in that timeframe, where  
25 once you had your first knowledge of an instance, you had a

1        timeline to provide a notice. And so we were trying to  
2        understand our timelines, what information we had at the  
3        time, what the best course of action would be to use. And  
4        labor relations, they're our subject matter experts for that  
5        CBA, so we rely on them to help guide us in the field.

6        Q. So let's --

7                    MS. DONESKY: Jan, if you can pull up 98, P-98.  
8        I'll give you page numbers as I go. You need to go one page  
9        in.

10      Q. So, Ms. Hoppenrath, after the notice was issued, what  
11     was your role then next in this timeline of events?

12      A. So in this timeline of events, I am the witness, I'm the  
13     company witness, so essentially I'll be presenting all of  
14     the information in the investigation. So these are  
15     factfinding missions -- not missions, but it's a factfinding  
16     investigation to understand all the aspects of the data that  
17     I have and then -- yeah.

18                   So over the course of -- from the time that we  
19     issued the notice to the time of the investigation, as well  
20     as, like, carrying on my normal functions, it was definitely  
21     preparing this, understanding the data, whether that was  
22     HLCS data, our track and time authorities, and then my  
23     personal observations, to show what had happened over those  
24     instances.

25      Q. And you were personally and physically present at this

1 hearing, correct?

2 A. Yes.

3 Q. There was a hearing officer?

4 A. Yes.

5 Q. Was Mr. Sanders present?

6 A. Yes.

7 Q. And did he have union representation?

8 A. Yes.

9 Q. Was that Mr. Mozinski?

10 A. Yes.

11 Q. And during the course of the hearing, was Mr. Mozinski  
12 able to cross-examine you?

13 A. Yes.

14 Q. And were exhibits presented at the hearing?

15 A. Yes.

16 Q. Including some by Mr. Mozinski?

17 A. I believe so.

18 Q. And a record was created of this hearing?

19 A. Yes.

20 Q. Looking at --

21 A. This would be the transcript.

22 Q. -- Exhibit 98, I'm not going to have Jan run through,  
23 but the record from that hearing would be then recorded into  
24 this hearing, correct?

25 A. Yeah. So we would record. It would get transcribed.

1 Q. And is that a requirement of the Collective Bargaining  
2 Agreement that Mr. Sanders is under?

3 A. Say that again?

4 Q. Is that a requirement of the Collective Bargaining  
5 Agreement?

6 A. To have it transcribed?

7 Q. Correct.

8 A. I believe so.

9 Q. And I would now like to go through the exhibits that  
10 you've mentioned one by one so that you can walk the jury  
11 through the evidence that relates to the observations you  
12 made on those days.

13 We're going to start with the March 19th date,  
14 which is this hearing, the subject of this April 3rd  
15 hearing.

16 MS. DONESKY: So if you can, Jan, please pull up  
17 page 118. You can enlarge it, please. A little bit bigger  
18 too, I think. Can you make it just a little bigger and keep  
19 the date on the bottom right-hand corner too? It looks  
20 pretty good, yeah. I think the jury can probably see that.

21 Q. So, Ms. Hoppenrath, what is this document?

22 A. So this is, like, the home screen of PARS. This  
23 specifically shows the month of March and what time has been  
24 submitted, so this is just, like, a high-level overview.

25 Q. Can you walk the jury through what this exhibit reveals.

1 A. Yeah. So anything with an "A" means it's submitted as a  
2 final draft.

3 Q. And you're referring to the green --

4 A. The green "A." I'm sorry. So a green "A" means that  
5 it's -- they're done and it's ready to be processed for  
6 payroll when it closes.

7 Q. Okay. And so that reflects that a final entry of time  
8 was made on that highlighted day of the 19th, correct?

9 A. Correct.

10 Q. And then what does it reflect on the bottom right-hand  
11 corner of that exhibit?

12 A. The date which I, like, print-screened it, so the 21st.

13 Q. Okay.

14 MS. DONESKY: And is there a date at the top of  
15 that exhibit, Jan, that you just might not be showing on  
16 that that shows -- yeah.

17 Q. So up top there, the work date, is that the March 19th?

18 A. I don't recall exactly why it says "March 19th." I  
19 forget if I highlighted it or if it shows as yellow when you  
20 click on it. It's been awhile. But it's a calendar for  
21 gang ID, TINS 0815, which would have been his work group.

22 Q. Okay. Then let's move to the second page. This is a  
23 three-page report, so walk us through the second page,  
24 please.

25 MS. DONESKY: Jan, if you can go to the second.

1 Sure. Next one. No, one more page down, please.

2 Q. Does that give you enough, Ms. Hoppenrath --

3 A. Actually, like, the pink line at top, the header,  
4 that'll show -- yeah. So this would have been for  
5 March 19th as denoted in the header in that first --

6 Q. Up top in the pink you have the day underlined.

7 A. Yeah.

8 Q. You had --

9 A. Yeah.

10 Q. For purposes of the hearing, I presume.

11 A. Yeah, just for clarification that we're talking about  
12 the 19th specifically, so then when you look at the time  
13 below it makes a little bit more sense. But this would show  
14 that he entered eight hours of straight time, which is  
15 denoted by the yellow highlight.

16 Q. And does this document then also show the date that the  
17 screenshot was made?

18 A. I believe so. It would be --

19 Q. Okay. Same date and time.

20 Okay. Let's move to the third page then of this  
21 report and please let us know what this reflects.

22 A. So where the last page showed that it was eight hours,  
23 this shows his specific start and end time, so here he  
24 enters that he started work at 7 and left at 1500.

25 Q. And 1500 is military time for 3 o'clock, correct?

1 A. Correct.

2 Q. And that's his scheduled bid position time.

3 A. Correct.

4 Q. And those are times that he enters as he's entering the  
5 time into PARS?

6 A. Yes.

7 Q. Let's go to Exhibit 4 then. Was this an additional  
8 exhibit that you submitted at the April 3rd, 2016 hearing?

9 A. Yeah. This would be the timely reporting note.

10 Q. Okay. Explain to us the March 19th entry.

11 A. So the March 19th just denotes that -- so you'll see the  
12 date column and it says 3-19-2016 and then there's a time  
13 stamp immediately to the right that says 3-19, 13, 15, 33,  
14 and so that indicates the last time that he updated time for  
15 that specific date. So he entered his time on the 19th at  
16 1:15 p.m.

17 Q. So he entered it on the same day that he worked.

18 A. Correct.

19 Q. And that would have been the 7 a.m. to 1500 time that we  
20 looked at on the PARS report?

21 A. Yes.

22 Q. Next exhibit then, Exhibit 5. Could you please explain  
23 this exhibit to the jury.

24 MS. DONESKY: Maybe get a little further in if we  
25 could. It looks pretty blurry. We can move to the left

1 after.

2 A. Yes. This is his FRA inspection log. So again, not  
3 disputing anything, that he came to work and he made the  
4 inspections. At 1:26 p.m. was when he entered his  
5 inspections for the day.

6 So just, again, trying to build the timeline  
7 throughout the day. This was one additional piece of data  
8 that says at 1:30 he was working. He did in fact input  
9 these inspections. So that was the purpose of this specific  
10 document.

11 Q. Remind me of your observations of when he departed on  
12 that day, 1:53?

13 A. Yeah.

14 Q. So these are showing last inspection entries shortly  
15 before that time, correct?

16 A. Correct.

17 Q. And on what date was this report pulled?

18 A. It looks like it was on -- I don't know if it actually  
19 says, unless it's --

20 Q. In the left-hand corner, is that reflecting of the date  
21 of these inspection reports, the highlighted portion?

22 A. The highlighted was just the timeframe. I pulled it  
23 from the 19th to the 19th.

24 Q. Okay. Very good. Let's move to Exhibit 6.

25 What is this document, Ms. Hoppenrath?

1 A. So like we were talking about before, this is the  
2 printout of his track authority. So that first one says  
3 that at 9:18 was when he was granted track and time.

4 MS. DONESKY: Jan, can we zero in on that top left  
5 corner time, please. Right there. Yeah.

6 Q. You're referring to the time here, the track and time  
7 authority at 9:18 on 3-19?

8 A. Yes, yeah.

9 Q. And when we spoke earlier and you were describing your  
10 observations on that day, does that match the time that you  
11 had indicated that the first time that track time authority  
12 was obtained?

13 A. Yeah. So again, like, his personal vehicle was in the  
14 lot when he got time at 9:18, so not disputing -- I mean,  
15 this says when he was working, and so this is to show how he  
16 worked his way over the territory for the next several  
17 hours.

18 So his first time was granted at 9:18 and then he  
19 reports clear at 10:11. And then you'll see overlap  
20 throughout the day as they move along the track, so they'll  
21 get some overlapping -- or maybe not overlapping, but  
22 adjacent blocks and you can't clear until you're in the new  
23 one, et cetera, et cetera. So this just paints the picture  
24 of how he actually inspected track that day. Or when I say  
25 how he inspected track, how he flowed across the system, or

1 across my territory.

2 Q. And is the reason that the track authorities, you know,  
3 straddle over various time because they're coordinating with  
4 the trains that are going through as well?

5 A. Yup. So it would be unrealistic to say, "Hey,  
6 dispatcher, I want my whole territory right now." So  
7 they're working and finding the most -- the dispatcher is  
8 finding the most efficient manner of what sections SPEKZ DZ  
9 of track they can give up. So there will be days where they  
10 get a really long portion of track and there'll be days  
11 where they have to go, like, segment by segment by segment.  
12 This was just a day where he made a good time on his run.

13 Q. Okay.

14 MS. DONESKY: And then as you scroll down then to  
15 the bottom, if you can just highlight the end part of the  
16 track authority portion, please. Thank you.

17 Q. And what does that last entry reveal?

18 A. So that last entry reveals that 1:28 he said that he was  
19 off the track and in the clear, and 1:28 he what we call  
20 gave up his time, so he was no longer going to be protected  
21 on track, so this is the final bit of track and time for  
22 that day.

23 Q. And again, this was the day that you personally observed  
24 him depart from the Dayton's Bluff area around what time?

25 A. Like 1:53, 1:56, somewhere in there. A little bit

1 before 2:00.

2 Q. So does this time align with that timeline?

3 A. Yes.

4 Q. So let's move to the next exhibit, Exhibit 7.

5 What is this document, Ms. Hoppenrath?

6 A. So this is going to come from his vehicle, from the HLCS  
7 system.

8 Q. Sorry to interrupt you, but when you say "vehicle," just  
9 because we've got company vehicles, personal vehicles,  
10 hi-rail vehicles, which vehicle are you referring to?

11 A. Yeah. This is going to be from his hi-rail inspection  
12 vehicle. So I don't have access to these documents. I had  
13 to request them from our team in Fort Worth. So I pulled --  
14 I request them by day, so they will send me everything with  
15 a time stamp from that day. So the Central Time stamp is  
16 the one that's pertinent to us, so it was received on 3-19,  
17 2016. The time stamp is 9:00 a.m.

18 And then if you go over into the hi-rail mode that  
19 says False HR Mode, Hi-Rail, that means his -- that means --  
20 it basically means he's not on track yet. So the ignition  
21 says that his vehicle is on. That's why it says True.

22 So at 9:00 a.m. the truck is started. That's what  
23 that first line tells me. The next important line is going  
24 to be in between 9 and 10, and that's because there's a  
25 change from false to true in that HR mode. So 9:21 is when

1 he sets on, which aligns with his track authority so that  
2 those validate each other, and then again the ignition is  
3 still on and the vehicle is still -- the vehicle is still  
4 turned on.

5 Q. And what about the last time that's reflected on this  
6 report?

7 A. At the very bottom?

8 Q. Yeah.

9 MS. DONESKY: And also, Jan, I think it's a  
10 multipage document. You just have to go to the --

11 Q. I can show it to you.

12 A. I think that's the beginning still.

13 Q. Oh, yeah. That is. Let me give you the page.

14 Page 132. What does that highlighted line show  
15 then, Ms. Hoppenrath?

16 A. So the important items to know between 526 and 527 is  
17 roughly 1323, which is about 123. The hi-rail mode goes  
18 from true to false, so he's now off the track and in the  
19 clear. And then his vehicle is still on. That has not  
20 changed.

21 And then the last several lines, 543 we see in the  
22 ignition column, which is, there's a rectangle around it,  
23 that that is now false as well, so his vehicle is now off.

24 And then from what I recall, the individual in  
25 Fort Worth who helps me understand these documents, is it

1       will just send out a series of pings, like four or five  
2       after, so that's why there's several that say "False." And  
3       then we don't have any record of this vehicle being turned  
4       on again that day.

5       Q. So the starting of this vehicle and the turning off, is  
6       that a manual thing that someone has to do? It's not a --  
7       you know, you can't do it remotely like --

8       A. Yeah, it would be like turning the truck on and turning  
9       it off.

10      Q. So based on that report it would have been turned off  
11       around that, roughly 13:52 time?

12      A. Yes.

13      Q. How does that align with your personal observations of  
14       Mr. Jones and his departure from Dayton's Bluff that day?

15      A. Mr. Sanders?

16      Q. Mr. Sanders. I'm sorry.

17      A. It aligns with what I had observed.

18      Q. Okay. And then at the beginning -- I think you  
19       mentioned 9 a.m. -- the ignition was turned on?

20      A. Yeah, which makes sense because he arrived to work at  
21       some point between 8:30 and 9:15.

22      Q. So fair to say at least as of 9 o'clock he would have  
23       presumably been there turning the vehicle on.

24      A. Correct.

25      Q. So then now we're looking at 9 a.m. to 1:53.

1 A. Yeah.

2 Q. There was -- Counsel asked you earlier this morning and  
3 referred to a number of -- two or three Instagram photos.  
4 Do you recall that?

5 A. Yup.

6 Q. Was that made as an exhibit to the hearing?

7 A. I think that it was.

8 MS. DONESKY: And Jan, if you might go to 25,  
9 26 -- yeah, page 25, 26, page 25. It's the testimony  
10 portion first. No, just 25. If you go more towards the  
11 bottom, there's some times 8:30, 9:59. Yeah, there to the  
12 bottom would be good.

13 Q. Was this evidence that the union was entering into the  
14 hearing?

15 A. Yes.

16 Q. And there were the pictures posting on Instagram  
17 reflecting three different times?

18 A. Yes.

19 Q. 8:30, 9:59 and 11:15?

20 A. Yes.

21 Q. At 8:30 -- you spoke of this earlier -- your  
22 observations there, was there any activity at the Dayton's  
23 Bluff that you were observing at that time?

24 A. I didn't see any. So to the best of my recollection, I  
25 looked up, posted the picture, still no one was there.

1 Q. And what you're observing or looking to observe is not  
2 something of a fleeting second or moment.

3 A. No. It's essentially like is his vehicle parked in the  
4 parking lot, is his work truck still in the working lot or  
5 is it being in use.

6 Q. And roughly, if you're in your car, if you posted a  
7 photo, about how long would that take you to do?

8 A. Maybe a couple of minutes. Nothing substantial.

9 Q. Okay. Then the two other times, 9:59 and 11:15, by  
10 those times what had you already observed and concluded by  
11 those times?

12 A. Again, I think I said this earlier. I don't remember  
13 where I was specifically, but he was on the track. You  
14 could even go back and look at, like, the TMDS about where  
15 he was exactly. There's a lot of information that I can get  
16 from, like, the TMDS records, and it would have been on  
17 certain parts of the territory just difficult to visually  
18 maintain where he was at at all times, so I was concerned  
19 with when he was coming and going.

20 Q. At those particular times, though, you knew --

21 A. I was confident that he was out working and inspecting.

22 Q. If at the hearing on April 3rd Mr. Sanders claimed that  
23 he was at a completely different location, specifically  
24 Bridal Veil, would you have observed him at Dayton's Bluff  
25 with these -- the posting have any relevance at all if he

1 was claiming he wasn't even at Dayton's Bluff?

2 A. I wouldn't have been able to see him. So it's a couple  
3 miles. I don't know the exact distance between Bridal Veil  
4 and Dayton's Bluff, maybe like a 15-minute drive. It's been  
5 awhile since I've done it.

6 So I was concerned with the primary reporting  
7 location where his hi-rail vehicle was. Yeah. If he was at  
8 Bridal Veil and I was looking at my phone for a couple  
9 minutes, I wouldn't have seen him anyways. He was several  
10 miles away.

11 Q. Let's move on to the second hearing, if we move to  
12 Exhibit 103.

13 And the date of this hearing -- I know it's kind  
14 of small there -- April 8th of 2016, what was your role at  
15 this hearing, Ms. Hoppenrath?

16 A. It would have been very similar to the one previous as  
17 the company witness, so I was there to present my findings  
18 and my data and my observations and present those to -- or  
19 for the record.

20 Q. And like the first hearing, you were physically present?

21 A. Yes.

22 Q. Mr. Sanders, was he present?

23 A. Yes.

24 Q. Did he have union representation?

25 A. Yes.

1 Q. Was there a hearing officer?

2 A. Yes.

3 Q. Were exhibits admitted?

4 A. Yes.

5 Q. Was a transcript made of the hearing?

6 A. Yes.

7 Q. Let's walk through the exhibits then that you presented  
8 at this hearing.

9 First off, what day or days were being reviewed in  
10 this investigation?

11 A. I had information for the 25th and the 26th.

12 Q. Okay. Let's move to the first exhibit, Exhibit 11.

13 MS. DONESKY: Which is at page 113, Jan.

14 Q. You can walk us through this exhibit, Ms. Hoppenrath  
15 when it's highlighted there.

16 What is this document?

17 A. This is going to be his track and time authorities  
18 again. So he got time at roughly 7 -- well, not roughly, at  
19 exactly 7:22, and then through the course of the day he's  
20 working his way through the territory. And then at 9:51,  
21 which is the bottom right highlighted number, is when he  
22 reports that he's in the clear for the day.

23 Q. And do you recall what time based on your personal  
24 observations on this day that you first observed him on  
25 property?

1 A. I believe it was like 7 a.m.

2 Q. And then roughly 22 minutes later he's obtaining the  
3 track and time authority. Does that align with your  
4 personal observations?

5 A. Yes.

6 Q. And then moving on then to Exhibit 12.

7 Could we actually just quickly go back to the  
8 other one? I forgot to do the end time. Sorry.

9 One page up, 123 still. At the bottom there's a  
10 highlight for the end of the track authority.

11 MS. DONESKY: Thank you, Jan.

12 Q. So then, Ms. Hoppenrath, can you then tell us what this  
13 reflects in the highlighted line?

14 A. Yeah. So at 9:51 he reported clear and that was his  
15 final track and time for the day.

16 Q. And so his time frame of track and time authority runs  
17 from 7:22 to 9:51 a.m.

18 A. Correct.

19 Q. And this is the Good Friday?

20 A. Yes.

21 Q. And this would be all overtime hours?

22 A. Yes.

23 Q. And does that end time align with the personal  
24 observation you made on his departure?

25 A. Yeah, again, it's about 20 minutes back to the shack. I

1 don't know how he reported clear. He can do that via a  
2 dispatching screen or the radio, but I saw him get back  
3 roughly 10, 11 -- I'm sorry, like 10:10, 10:11, and then he  
4 had left for the day, so it aligns with what I had observed.

5 Q. Exhibit 12, please.

6 What does this document reflect, Ms. Hoppenrath?

7 A. So this also is just more information about his day and  
8 what it looked like. This one notes that 7:23 is when the  
9 hi-rail mode was engaged. That's about what time he set on  
10 the track.

11 And then the first line which isn't highlighted  
12 would have been when he started the vehicle. We would have  
13 to go back and rehighlight that. But this specific snip  
14 says that at 7:23 was when he started hi-railing.

15 Q. And then does it reflect when it concluded its work on  
16 the day?

17 MS. DONESKY: Jan, you'll probably just need to  
18 scroll through.

19 A. This says at 9:47 he was clear --

20 Q. Oh, yeah, page 141.

21 A. Sorry.

22 Q. No, that's okay.

23 A. Do you want me to walk through this?

24 Q. Please.

25 A. Okay. So 9:47 is the time stamp for when that hi-rail

1 mode goes from true to false, so that's essentially what  
2 time he set off the track, and then at that point he'll have  
3 to travel back to Dayton's Bluff.

4 Q. And what does Exhibit 13 -- could we go to page 123,  
5 please.

6 Please walk the jury through this document.

7 A. So this again is, like, the FRA inspections. I ran it  
8 from 3:24 to 3:26.

9 Q. And why did you do that?

10 A. Because initially when I just put in 3:25 there was no  
11 data, and so I ran it for extended dates just to show that  
12 it wasn't, like -- it was to try and show there wasn't an  
13 error in the system, that it was, like, bringing all the  
14 information that it had.

15 So I essentially ran this so there wasn't going to  
16 be a question if after he left or after I saw him leave that  
17 he would say that he was entering inspections, because this  
18 report says that they weren't any entered on that day.

19 Q. Is it unusual to not have inspections reported nor a  
20 particular day?

21 A. This is the FRA inspection. So if it was a BNSF  
22 inspection because we had a higher frequency, then it would  
23 be acceptable. Typically -- or I don't even want to say  
24 typically, but track inspectors could enter additional FRA  
25 inspections. There wasn't anything that said we could more

1 stringent than the FRA guidelines.

2 Q. And then the next exhibit, 14.

3 MS. DONESKY: 124, Jan. Yup, there you go.

4 Q. So walk us through this exhibit, please.

5 A. So again, this is the overview for the month, so this  
6 says when I looked at this report on the 25th, time was  
7 submitted in a final status for the 25th of March.

8 Q. And then why don't you go to the next page to identify  
9 the hours that were entered for that day. A little bigger?  
10 There we go.

11 At the top in the pink-colored line, what does  
12 that reflect?

13 A. That's the date for the time, so this is the time for  
14 3-25.

15 Q. And that again was the Good Friday?

16 A. Correct.

17 Q. So walk us through the time that was entered for that  
18 day.

19 A. So we have the eight straight hours and then the eight  
20 hours and 30 minutes of overtime pay.

21 Q. And the eight hours would reflect what?

22 A. The eight hours would reflect the holiday pay and then  
23 the eight and a half would have been the time that he worked  
24 that day for 16 and a half hours total.

25 Q. And all the time he claimed to have worked for OT

1       hours -- they were all overtime hours. From minute one on  
2       that particular day were all overtime.

3       A. Right. Because it was a BNSF paid holiday, it was  
4       overtime.

5       Q. And that's time and a half that's provided her hour?

6       A. I believe so.

7       Q. And then the third page of this PARS report then?

8       A. That will be the specifics, so what are his start and  
9       end times, so as soon as we pull that up.

10      Q. Sure.

11                  MS. DONESKY: You can make that just a little  
12                  bigger, Jan, please. Thanks.

13      A. So here he claims that he started at 6 a.m. and then he  
14      ended at 14:30.

15      Q. Can we circle that. Okay. So the time of overtime  
16      reported for hours worked was a 6 a.m. start time through to  
17      14:30, which is 2:30.

18      A. Correct.

19      Q. And your observations in the documents we just went  
20      through reflect what times?

21      A. Roughly 7 to 10:15.

22      Q. And on the left -- so 7 to 10:15, three hours and 15  
23      minutes is what you observed.

24      A. Correct.

25      Q. And reported was eight hours and 30 minutes of overtime.

1 A. Correct.

2 MS. DONESKY: Jan, can you just move the line so  
3 the hours and minutes show the 8:30 just on the time entry  
4 next to the time? That's page 3. We were just there, but  
5 it's okay. Oh, yeah, there. Very good. And those are the  
6 hours recorded.

7 So then let's -- I think that concludes the 25th  
8 of March, so just walk us through the 26th, which I think  
9 begins at Exhibit 16, so that would be 130, page 130, Jan.

10 Why don't we look at Exhibit 17 then. I think  
11 we're on the 26th on that day. Yes.

12 Q. So walk us through -- now we're now on March 26th. If  
13 you can walk us through those entries, please.

14 A. Yup. So on March 26th, this reflects that he had gotten  
15 his first track authority at 6:47 a.m. and then he released  
16 his final track authority at 9:29 a.m.

17 Q. Okay. And the next exhibit -- we've looked at these  
18 exhibits, so we know, we're familiar with them now so we can  
19 run through them.

20 The next one, Exhibit 18. This is the hi-rail  
21 vehicle?

22 A. Yup.

23 Q. False starts and finishes?

24 A. Yes. So this indicates that at roughly 6:37 is when he  
25 started the vehicle, and then if you hop down to where it's

1           circled it's 6:47 when he begins his hi-rail.

2       Q. And this aligns with -- this was the day that you  
3       observed the track and time authority to determine when he  
4       began?

5       A. Yeah. I was not there when he started, so I relied on  
6       other documentations to put together, like, the general  
7       outline.

8       Q. Okay. And then if we can go to the end of this exhibit.

9       A. So this one will show that at roughly 9:48 was when it  
10      went from -- this actually is when he turned the vehicle  
11      off, I believe. I don't have the headers, but that true to  
12      false at 9:48 is when he turned the vehicle off.

13      Q. So the vehicle would have been on from roughly 6:37  
14      through 9:48 on that day.

15      A. Correct.

16      Q. Okay. Next exhibit, 142. Or I guess it would be 143.  
17      There you go.

18                  This is the PARS report we've been looking at?

19                  MS. DONESKY: Oh, 142, Jan. Sorry. Go one up.  
20                  Yup. Thanks.

21      Q. Now we're looking at the 3-26? What does this reflect,  
22      Ms. Hoppenrath?

23      A. So this would show that his time was entered on the  
24      26th.

25      Q. Okay. And then page 2 of the PARS report.

1 A. Or excuse me. It was the time for the 26th, not  
2 necessarily on the 26th.

3 Q. Because this is the day that the time was entered on  
4 March 29th.

5 A. Correct.

6 Q. And this is also the report that had the date --

7 A. Yes.

8 Q. -- cut off at the bottom.

9 A. Yes.

10 Q. At the top, however, on the pink as we've been looking  
11 at with the other exhibits, does that reflect the 3-26 --

12 A. Yes, it reflects the 3-26 where he claims nine total  
13 hours, eight hours of straight time and one hour of  
14 overtime.

15 Q. Okay. And this was a day that your observations --  
16 based on reviewing the records, track time authority, and  
17 then you arrived at the depot just before 11?

18 A. Yes. So there was I want to say roughly four and a half  
19 hours accounted for, roughly 6:30 to 11.

20 Q. Giving him the benefit of the doubt --

21 A. Correct, because I was not there to physically watch him  
22 leave.

23 Q. Right. So between 9:47 when the hi-rail turns off until  
24 you arrive, there's about an hour there --

25 A. Correct.

1 Q. -- that it's unclear --

2 A. Correct.

3 Q. -- when he may have left. Right. Okay.

4 But based on your 11 o'clock arrival and the car  
5 was gone, that would be roughly four and a half to five  
6 hours.

7 A. Correct.

8 Q. Okay. And nine hours was reported.

9 A. Correct.

10 Q. Okay.

11 MS. DONESKY: Can you do the final page of that  
12 exhibit that shows the start and end times? Yes, thanks,  
13 Jan.

14 A. This one's just the overview.

15 MS. DONESKY: One more down, please. Thanks.

16 A. This is not the start and end time, but this was after  
17 Mr. Sanders went in and adjusted from eight hours of  
18 straight time to one hour of overtime -- or from eight and  
19 one to eight and zero.

20 Q. Okay. We can stay on this. I think the other we can  
21 look at the times later, begin and end times.

22 So explain what this document reveals then for  
23 3-26.

24 A. This, to the best of my recollection, was after  
25 Mr. Sanders was given the notice of investigation, and so

1       there was modification to the time roll after he was given  
2       the notice.

3                   MS. DONESKY: So can we scroll down to the bottom  
4       right-hand corner of the screenshot then.

5           Q. What time then was this report pulled?

6           A. I had pulled it at 11:14.

7           Q. Okay. And when it was pulled at that time, it revealed  
8       edited -- a different time then he had entered earlier that  
9       morning.

10          A. Correct.

11          Q. Okay. And the change was to remove the one overtime  
12       hour --

13          A. Correct.

14          Q. -- so it went down from nine to eight?

15          A. Correct.

16          Q. And this is the same March 26 that your observations and  
17       review of records reflected roughly, or on the high side,  
18       four and a half to five hours.

19          A. Yes.

20          Q. So still an overage of at least three hours. And as you  
21       mentioned, timing on this day, on this edit, the edit  
22       occurred by Mr. Sanders -- presumably he made the change,  
23       but the change occurred after the hearing notices had been  
24       issued to him?

25          A. Correct.

1 Q. Were you the one to issue -- did you personally or were  
2 those personally given to him? How were those notices  
3 given?

4 A. They were personally given to him, but we had made a  
5 decision to have Mr. Jones actually deliver the notice, so I  
6 was not at the Bluff that morning.

7 Q. Okay. And those would have been earlier in the day  
8 prior to 11:14 a.m.

9 A. Yeah. I don't recall the exact time.

10 Q. And if we can scroll up to just -- was there a change  
11 made for 3-25 as well?

12 A. I believe that there was. It had changed from eight and  
13 a half to four and a half.

14 Q. 130, please. Can you walk us through this document,  
15 Ms. Hoppenrath.

16 A. Yes. So this -- we had originally looked at one where  
17 there was the eight hours of the straight time for the  
18 holiday pay and then eight and a half hours of overtime.  
19 This one was edited I believe roughly the same time -- it'll  
20 be time stamped -- back to the four and a half hours of  
21 overtime, so significantly closer to what he actually  
22 worked.

23 Q. And then if you can scroll down to the bottom right  
24 corner of that document just to show what the time was on  
25 that day.

1                   Similar. We looked at 11:14 was the other one and  
2 this one's 11:11.

3                   A. Correct.

4                   Q. Ms. Hoppenrath, did you have any role after these  
5 hearings were held in the decision with respect to what  
6 discipline or dismissal of Mr. Sanders afterwards?

7                   A. No.

8                   Q. So you were not involved as a decisionmaker afterwards?

9                   A. No.

10                  MS. DONESKY: This is actually a good break time  
11 for me to go to a different section. I can certainly begin  
12 it.

13                  THE COURT: We can stop here.

14                  MS. DONESKY: Okay.

15                  THE COURT: All right. As I indicated, Members of  
16 the Jury, we're going to dismiss at this time on account of  
17 the weather and the court's closure order. I have two  
18 admonitions for you.

19                  The first is, please bear in mind and adhere to  
20 the instructions that I gave you earlier about your conduct,  
21 both when you're here, obviously, but those apply when  
22 you're away from the courthouse as well.

23                  And the second is just please drive safely today  
24 on your way out.

25                  I'm going to stick around and talk to the lawyers

1       about a couple things, but we will excuse you at this time.

2       See you Monday morning at 9 a.m.

3                     (Jury excused)

4                     THE COURT: Thank you. Please be seated.

5                     Ms. Hoppenrath, you can step down if you like.

6                     THE WITNESS: I have to get my shoes.

7                     THE COURT: Oh, sorry.

8                     (Laughter)

9                     THE COURT: Let me ask BNSF where you think we're  
10          at with respect to time given the weather glitch that we've  
11          encountered here today.

12                    MS. DONESKY: With Ms. Hoppenrath, or generally?

13                    THE COURT: Generally.

14                    MS. DONESKY: Generally. We're going to try to  
15          move it as best we can.

16                    THE COURT: I get it. I'm just curious, trying to  
17          figure it out.

18                    MS. DONESKY: Yeah. I mean, I definitely think  
19          we're into Tuesday with testimony still, because Mr.  
20          Chartier -- yeah, we're definitely into Tuesday.

21                    THE COURT: Okay. All right. I appreciate  
22          knowing that.

23                    Let me ask the plaintiff: Do you anticipate that  
24          there's a need for us to gather before we convene Monday  
25          morning at 9 a.m.?

1 MR. JAMES KASTER: I don't think so, Your Honor.

2 THE COURT: And how about the defendant?

3 MS. DONESKY: I don't believe so either.

4 THE COURT: All right. We will get started then  
5 Monday morning at 9 a.m.

6 Thanks, everyone. Have a safe drive home here and  
7 a good weekend. We'll see you Monday morning.

8 MR. JAMES KASTER: Thank you, Your Honor.

9 (Proceedings concluded for the day at 3:00 p.m.)

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## I N D E X

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\* \* \* \* \*

## E X H I B I T S

**NUMBER** **FOR ID IN EVIDENCE**

Plaintiff 16 706

C E R T I F I C A T E

I, **TIMOTHY J. WILLETTTE**, Official Court Reporter  
for the United States District Court, do hereby  
certify that the foregoing pages are a true and  
accurate transcription of my shorthand notes,  
taken in the aforementioned matter, to the best  
of my skill and ability.

*/s/ Timothy J. Willette*

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